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No. 425

TRANSCRIPT OF RECORD

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT.

No. 16,565

EXCHANGE BANK & TRUST COMPANY and BRIGGS WEAVER MACHINERY CO., FIRST NATIONAL BANK IN DALLAS and CITY OF DALLAS, TEXAS, Intervenors,

Appellants,

versus

TUBE'S MANUFACTURING COMPANY, INC., and UNITED STATES OF AMERICA,

Appellees.

Appeal from the United States District Court for the Northern District of Texas.

(ORIGINAL RECORD RECEIVED MAR. 8/57.)
U. S. COURT OF APPEALS
FILED
APR 10 1957
EDWARD W. WADSWORTH
CLERK

INDEX

	PAGE
Caption	1
Original Complaint	1
Order entered 10/26/56 of the 134 Judicial District Court, Appointing Leonard Hoffman, Receiver of Tubbs Manufacturing Company	16
Petition in Intevnetion of Briggs-Weaver Machinery Company	24
Exhibit "A"—Photostat of Promissory Note, Tubbs Mfg. Company, Inc., to Order of Briggs-Weaver Machinery Co., for $2,-784.00, dated 2/18/55	35
Exhibit "B"—Photostat of Promissory Note, Tubbs Manufacturing Company to Order of Briggs-Weaver Machinery Co., for $950.52, dated 4/28/55	36
Exhibit "C"—Photostat of Promissory Note, Tubbs Mfg. Company, Inc., to Order of Briggs-Weaver Machinery Co., for $2,-502.00, dated 2/10/56	37
Petition of United States for Removal	38
Notice of Removal	40
Answer of United States to Petition of Intervention of Briggs-Weaver Machinery Company	41
Complaint in Intervention of First National Bank in Dallas	47
Order entered 11/23/56 of 134th Judicial District Court appointing Leonard Hoffman, General Receiver	49
Answer of Tubbs Mfg. Co., Inc.	52
Order entered 12/14/56 of U. S. District Court appointing Leonard Hoffman, General Receiver	52
Answer of City of Dallas, Texas to Petition of Intervention of Briggs-Weaver Machinery Company	54

INDEX—Continued

	PAGE
Answer of Plaintiff Exchange Bank & Trust Co., to Petitions of Interventions	61
Stipulation of Facts	68
Exhibit "A"—Photostat of Contract of Sale and Chattel Mortgage between Tubbs Manufacturing Company and Briggs-Weaver Machinery Company, dated 4/28/55	85
Opinion of the Court	87
Judgment, entered 1/31/57	89
Notice of Appeal	93
Joint Stipulation of Counsel as to Contents of Record on Appeal	95
Stipulation and Order entered 3/5/57 transmitting Original Exhibits to Appellate Court	98
Appellants' Exchange Bank & Trust Company, Briggs-Weaver Machinery Co., and First National Bank in Dallas, Statement of Points on Appeal	100
Appellant's City of Dallas Statement of Points on Appeal	103
Clerk's Certificate	107

CAPTION.

BE IT REMEMBERED, that at a session of the United States District Court in and for the Northern District of Texas, held at Dallas, Texas the Honorable William H. Atwell, United States District Judge for the Northern District of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

No. 6861 Civil.

EXCHANGE BANK & TRUST CO., ET AL.,

versus

TUBBS MFG CO., INC., ET AL.

ORIGINAL PETITION.

Filed Dec. 18, 1956.

(Title Omitted.)

To the Honorable Judge of said Court:

Now comes Exchange Bank & Trust Company, formerly known as The Love Field State Bank, a state banking corporation, duly organized and existing under and by virtue of the laws of the State of Texas with its place of doing business at Dallas, Dallas County, Texas, hereinafter referred to as Plaintiff, complaining of Tubbs Manufacturing Co., Inc., a cor-

poration, hereinafter referred to as Defendant, and whose office and principal place of business is located at 2424 Wyman Street, Dallas, Dallas County, Texas, and whose President, W. O. Tubbs, resides at 2507 West Lovers Lane in Dallas, Dallas County, Texas, and whose Vice-President, Solon A. Tubbs, resides at 3728 Bolivar Drive in Dallas, Dallas County, Texas, and for its cause of actron, Plaintiff would show the following:

I.

(A) That on or about the 19th day of November, 1953, the Defendant, for value received, executed and delivered to Plaintiff its Promissory Note, bearing date of such day and year, and therein promised Plaintiff to pay it, or its order, at its office in Dallas, Texas, 18-months after date, the sum of $3,762.00 with interest at the rate of ten (10%) per cent per annum from maturity until paid. That on June 30, 1954, there was a balance of $2,199.44 due and payable on said note. That a copy of said note is attached hereto and marked "Exhibit A" and made a part hereof for all purposes.

(B) That on or about the 30th day of June, 1954, the Defendant, for value received, executed and delivered to Plaintiff its Promissory Note, bearing date of such day and year, and therein promised Plaintiff to pay it, or its order, at its office in Dallas, Texas, 24-months after date, the sum of $5,499.60 with interest at the rate of ten (10%) per cent per annum from maturity until paid. That said note was in renewal of the balance owed on the note dated November 19, 1953 as described in Paragraph "A" above

and for additional advances and interest. That a copy of said note is attached hereto and marked "Exhibit B" and made a part hereof for all purposes.

II.

(A) That on or about the 14th day of April, 1955, the Defendant, for value received, executed and delivered to Plaintiff its Promissory Note, bearing date of such day and year, and therein promised Plaintiff to pay it, or its order, 90-days after date, the sum of $4,060.00 with interest at the rate of ten (10%) per cent per annum from maturity until paid. That a copy of said note is attached hereto and marked "Exhibit C" and made a part hereof for all purposes.

(B) That on or about the 18th day of July, 1955, the Defendant, for value received, executed and delivered to Plaintiff its Promissory Note, bearing date of such day and year, and therein promised Plaintiff to pay it, or its order, 60-days after date, the sum of $2,525.00 with interest at the rate of ten (10%) per cent per annum from maturity until paid, said note being in renewal of the balance due and payable on the note dated April 14, 1955 and described in Paragraph (A) of Section II above. That a copy of said note is attached hereto and marked "Exhibit D" and made a part hereof for all purposes.

(C) That on or about the 28th day of September, 1955, the Defendant, for value received, executed and delivered to Plaintiff its Promissory Note, bearing date of such day and year, and therein promised Plaintiff to pay it, or its order, 90-days after date, the sum of $1,522.00 with interest at the rate of ten

(10%) per cent per annum from maturity until paid, said note being in renewal of the balance due and payable on the note dated July 18, 1955, and described in Paragraph "B" of Section II above. That a copy of said note is attached hereto and marked "Exhibit E" and made a part hereof for all purposes.

(D) That on or about the 27th day of December, 1955, the Defendant, for value received, executed and delivered to Plaintiff its Promissory Note, bearing date of such day and year, and therein promised Plaintiff to pay it, or its order, 60-days after date, the sum of $1,262.50 with interest at the rate of ten (10%) per cent per annum from maturity until paid, said note being in renewal of the balance due and payable on the note dated September 28, 1955 and described in Paragraph "C" of Section II above. That a copy of said note is attached hereto and marked "Exhibit F" and made a part hereof for all purposes.

(E) That on or about the 27th day of February, 1956, the Defendant, for value received, executed and delivered to Plaintiff its Promissory Note, bearing date of such day and year, and therein promised Plaintiff to pay it, or its order, 90-days after date, the sum of $1,015.00 with interest at the rate of ten (10%) per cent per annum from maturity until paid, said note being in renewal of the balance due and payable on the note dated December 27, 1955 and described in Paragraph "D" of Section II above. That a copy of said note is attached hereto and marked "Exhibit G" and made a part hereof for all purposes.

III.

That on or about the 30th day of May, 1956, the Defendant, for value received, executed and delivered

to Plaintiff its Promissory Note, bearing date of such day and year, and therein promised Plaintiff to pay it, or its order, at its office in Dallas, Texas, 12-months after date, the sum of $1,806.00 with interest at the rate of ten (10%) per cent per annum from maturity until paid, and for ten (10%) per cent attorney's fees upon principal and interest if placed in the hands of an attorney for collection, said note being in renewal of the balance then towing on he note dated June 30, 1954 and described in Paragraph "B" of Section I above and being in renewal of the balance then owing on the note dated February 27, 1956 and described in Paragraph "E" of Section II above. That said note further provides for the deposit by Defendant in a Budget Loan Deposit Account in Plaintiff Bank, the sum of $150.50 on the 16th day of July, 1956, and for a deposit of a like amount in said account on the 16th day of each successive month thereafter to and including the 16th day of June, 1957; and further providing that upon default in making any such monthly deposit that said note, for the full amount thereof, at the holder's option, shall become immediately due and payable, and provides for waiver of presentment for payment and demand and a copy of said note is attached hereto and marked "Exhibit H" and made a part hereof for all purposes.

IV.

Plaintiff alleges that Defendant made deposits in said Budget Loan Deposit Account on August 29th, and August 30, 1956, in the amount of $150.50 each. That Defendant is in default and upon demand has failed and refused to make the deposits as provided in the note described in Section III hereof. That on

October 17, 1956 Plaintiff declared the full amount of said note to be matured and to be immediately due and payable. Plaintiff has been at all times, and is now, the legal holder and owner of said note.

V.

That Plaintiff has placed said note, described in Section III hereof, in the hands of its attorneys for collection and has agreed and promised to pay them a fee of ten (10%) per cent of the amount of principal and interest due on said note as compensation for their services, which is a reasonable amount therefor.

VI.

That Plaintiff has applied the deposits in the said Budget Loan Deposit Account, described in Sections III and IV hereof, and being in the total amount of $301.00 to the payment of said note; that Plaintiff has allowed a credit on said note in the amount of $68.43 for unearned interest. That the principal amount of $1,436.57 is now due and payable on said note; that Plaintiff has been damaged in the sum of $1,436.57, together with interest at the rate of ten (10%) per cent per annum from maturity until paid, and for attorneys fee in the amount of ten (10%) per cent of the amount of principal and interest due on said note.

VII.

That on the 19th day of November, 1953, the Defendant executed and delivered to Plaintiff its Chattel Mortgage, whereby it bargained, sold, and conveyed

the hereinafter described personal property to Plaintiff to secure the payment of all of said notes described herein, and including the note described in Section III hereof to-wit:

Equipment and Machinery as Follows:

Power Beating Machine, 7290 Z
Drese & Krump power press brake
1 Rapid air press, 1145145
Rex Spotwelder 15 KVA
2 David J. Ross punch presses, #0-0 with motors
1 Pressright punch press, 1507
1 Benchmaster 4 tongue punch press, 74812834
1 Whitney 10 ton punch press
1 Air operated angle iron shear
1 Niagra air operated 6' squaring shear
1 Circle shear
1 Le Blend 16" engine lathe, 1400
1 Pexte 36" squaring shear, 11-48
Extra set blades
1 American Chain & Cabling Co. nibling machine
1 Dreis & Krump cornice brake, 4-639
1 Verson 15 ton press brake & dies, 16-48-8748
1 Ingersol Rand air compressor, 234-C4
1 Dayton air compressor
1 Curtis air compressor
2 Devilbiss paint guns
1 Thor paint gun
1 G.E. 250 amp welder, 8818485
1 Delta drill press, 47-5185
1 Vise
1 Taping chuck
1 Set multiple rolls

2 Birdsell elct. welders, 5696, 6304
1 Marquette 250 amp welders
1 Johnson power saw, B1363
1 Dyer spotwelder, 801
4 Acetylene torches
1 Cutting torch
1 Set acetylene & air regulators & gauges
1 Spinning machine
1 Marshalltown rotor shear
1 Companion drill press, 101-03541
1 Dure sanding machine, 651-146-NIL
1 Darra-James circle power saw
1 Dade head
1 Craftsman band saw, 102-01121
1 Sioux sanding machine, portable, 172891
4 Chicago Pneumatic hammers
2 Pneumatic screw drivers
2 Stanley 16 ga. unishears
1 Pexte 36" rolls, 48
1 Thor elect. screwdriver, 1116106
2 Black & Decker 1/4 HD Elect. drills, 1499591, 2749943
2 Black & Decker 5/10 HD elect. drills, 263648, ...
2 Black & Decker, 1/4 LD eleet. drills, 2729079 2924585
1 Buffalo Post drill press
1 Modified squeeze on casters
Assorted dies & diesets
1 Set special built rolls
1 Tool grinder
1 Balance stand
1 Royal typewriter, 1 L.C. Smith-Corona typewriter, 1 portable typewriter, 1 desk, file cabinet, chair, typewriter desk, chair metal table & cabinet, check protector, 1 Remington adding machine.

That the said chattel mortgage created a lien, which is still subsisting against such property, to secure the payment of said notes described herein and all amounts due thereon, and a copy of said chattel mortgage is attached hereto and marked "Exhibit I" and made a part hereof for all purposes.

VIII.

That on the 30th day of June, 1954, the Defendant executed and delivered to Plaintiff its Chattel Mortgage, whereby it bargained, sold and conveyed the hereinafter described personal property to Plaintiff to secure the payment of all the said notes described herein, including the note described in Section III hereof, to-wit:

Machinery and Equipment Located at 2424 Wyman St., Dallas, Texas as Follows:

1 Power Beading Machine, Ser. No. 7290Z
1 Dreis & Krump Power Press Brake
1 Rapid Air Press, 1145145
1 Rex 15KVA Spot Welder, 7653
2 David J. Ross #00 Punch Presses w motors
1 Press Rite Punch Press w/motor, Ser. No. 1507
1 Benchmaster Punch Press w/motor, Ser. No. 74812834
1 Whitney 10 ton Punch Press w/motor, Ser. No. 129356351
1 Air Operated Angle Iron Shear
1 Niagara Air Operated 6' Power Squaring Shear,
1 Circle Shear 2 3/4 hp motor
1 La Bond 16" Engine Lathe, Ser. No. 1400

1 Pexto 36" Squaring Shear w/extra set of blades, ser. No. 11-48

1 American Chair & Cableing Co. Nibbling Machine

1 Dreis & Krump Hand Bending Brake, Ser. No. 4-639

1 Verson 15 Ton Power Press Brake, Ser. No. 16-48-8748.

1 Ingersoll-Rand Air Compressor w/motor, Ser. No. 234-C4

1 Darra James 8" Power Circle Saw w/motor

1 Dado head

1 Craftsman Band Saw, Ser. No. 102-01121

1 Dayton Air Compressor w/motor

1 Curtis Air Compressor

2 DeVilbiss NBC Spray Guns

1 Binks Paint Spray Gun

1 General Electric 250 amp electric Welder—Model 6WK15F600

1 Delta Bench Model Drill Press, Ser. No. 47-5185

1 Cardinal 6 Drill Press Vise

1 Ettco Model 1-B tapping attachment

1 Set of Multiple Rolls

2 Birdsell Electric Welders, Ser. No. 5696 & 6304

1 Marquette 250 amp Arc Welder

1 Johnson horizontal metal Band Saw. Ser. No. B-1363

1 Dyer Spot Welder, Ser. No. 801

4 Acetylene Torches

1 Cutting Torch

Misc Acetylene & Air regulating gauges

1 Spinning machine 1-1/2 hp motor

1 Marshalltown Rotary Shear

1 Companion Drill Press w/ 1/2 hp motor, Ser. No. 101-03541

1 Duro Belt Sanding Machine, Ser. No. 651-146-ML

2 Pneumatic Screw Drivers

1 Stanley Model U216 Electric Unishear, Ser. No. U44844

1 Stanley Model 16A Electric Unishear, Ser. No. U32159F

1 Pexto 36" Slip Roll Machine, Ser. No. 48

1 Thor Electric Screw Driver, Ser. No. 1116106

1 Black & Decker 1/4" heavy duty electric portable drill, Ser. No. 1499591

1 Black & Decker 1/4" heavy duty electric drill, Ser. No. 2749943

1 5/16" Black & Decker heavy duty electric portable drill

1 Black & Decker 5/16" heavy duty portable electric drill, Ser. No. 263648

11/4" Black & Decker Special electric portable drill, 2729079

1 1/4" Black & Decker special electric portable drill, (sent out for repairs) Ser No. 2924585

1 Buffalo 16" Post Drill Press w/1/2 hp motor

Misc. assorted dies and die sets

1 Set of special built rolls

1 Black & Decker 6" Portable electric Grinder, Ser. No. 2496847

1 Balance Stand

1 B-Line 6" Bench Grinder

12 Pneumatic Rivet Guns, Ser. Nos. H-31686, A-35340, H-110876, H-28727, A-05199, A-64482, H-28721, A-49597, H-190158, 2S-560314, H-223336, H-121905

1 Black & Decker Utility Portable Electric Drill

1 1/4" Black & Decker heavy duty portable electric drill, Ser. No. 2987101

1 1/4 Black & Decker Utility Portable Electric Drill, Ser. No. 865986

1 1/4" Black & Decker heavy duty Portable Electric Drill, Ser. No. 2987116

1 1/4" Black & Decker heavy duty Portable Electric Drill, 2987041

1 1/4" Black & Decker heavy duty Portable Electric Drill, Ser. No. 2987118

1 1/4" Black & Decker heavy duty Portable Electric Drill, Ser. No. 2987141

1 1/4" Black & Decker standard Portable Electric Drill, Ser. No. 3052230

1 1/4" Black & Decker utility Portable Electric Drill, Ser. No. 813510

1 1/4" Black & Decker utility Portable Electric Drill, Ser. No. 8D4708

1 1/4" Black & Decker heavy duty Portable electric drill, Ser. No. 3052289

1 1/4" Black & Decker heavy duty Portable electric drill, Ser. No. 3052289

1 Special Metal Roll, Ser. No. 9478

1 Extra Reel for above, Ser. No. 7468

1 Sioux 7" disc sander

Black & Decker Model 93 Disc Sander, Ser. No. 2964337.

1 Porter Cable A2 Belt Sander, Ser. No. A-249169

1 Craftsman Belt Sander, Ser. No. 2072230

1 Horizontal Air Compressor w motor, Ser. No. 459858

1 Horizontal Air Compressor, Ser. No. KJ 1854

1 Delta 6" Jointer w/motor, Ser. No. 111-266

1 Delta 14" Band Saw w/motor, Ser. No. AS 2686

1 Craftsman 8" Bench Saw w/motor, Ser. No. 101-02141

All other machinery and equipment now owned or hereafter acquired.

That the said chattel mortgage created a lien, which is still subsisting against such property, to secure the payment of said notes described herein and all amounts due thereon, and a copy of said chattel mortgage is attached hereto and marked "Exhibit J" and made a part hereof for all purposes.

IX.

Plaintiff further states, as hereinbefore alleged, that it is the owner and holder of valid, subsisting chattel mortgage liens on the above described personal property, and has a right to and interest in the same; that the conditions of said mortgages have not been performed and that the mortgaged personal property in question is probably now valued at about $1,250.00; that it appears that the mortgaged property is in danger of being lost, removed, or materially injured; that the immediate appointment of a receiver for the above described personal property is necessary to protect the rights of the Plaintiff in and to said property because Defendant has ceased operations, has gone out of business and has for all material purposes abandoned said personal property; that unless a receiver is appointed, Plaintiff will suffer irreparable injury and loss in that said property will suffer waste and deterioration and is in danger of being lost and removed, and, for the protection of its rights, Plaintiff has no other plain, speedy or adequate remedy either in law or in equity.

Wherefore, premises considered, Plaintiff prays that the Defendant be cited to appear and answer herein, and, that upon a final hearing hereof, that Plaintiff have judgment against Defendant for the sum of $1,436.57, the amount of its damage as herein alleged, together with a foreclosure of its chattel mortgage liens as same existed on November 19, 1953 and June 30, 1954, respectively, and for Order of Sale; and that it have judgment for its attorney's fees in the amount of $143.66 and for its costs and for such other and further relief to which Plaintiff may be entitled, whether at law or in equity.

Plaintiff further prays that, upon the filing of this petition, a receiver of the personal property above described be appointed by reason of the necessity therefor, as above set forth; that such receiver be authorized, empowered and directed to take said property into his possession; to protect, preserve and save the same; that all persons, firms or corporations having or claiming possession of, or a right to, such property being enjoined from interfering with said receiver in the discharging of his duties under his appointment; and for such other, further or different relief to which Plaintiff may be entitled.

BLAKLEY and WALKER,
LEE SHOPTAW,
(Lee Shoptaw),
ROBERT S. TROTTI,
(Robert S. Trotti),
Attorneys for Plaintiff.

411 Guardian Life Bldg.,
1307 Pacific Avenue,
Dallas 2, Texas.

The State of Texas,
County of Dallas.

Before Me, the undersigned authority, on this day personally appeared W. T. Burke, Jr., who being by me first duly sworn, stated on oath that he is the duly authorized Vice-President of Exchange Bank & Trust Company, Plaintiff in the above styled and numbered cause, and that as such he is familiar with the facts and representations contained in the foregoing petition, and that the same are true and correct.

W. T. BURKE, JR.,
(W. T. Burke, Jr.).

Sworn to and Subscribed Before Me, by the said W. T. Burke, Jr., this 26th day of October, 1956, to certify which witness my hand and seal of office.

SOPHIA STOYANOFF,
(Sophia Stoyanoff),
Notary Public in and for
Dallas County, Texas.

(Seal)

My Commission Expires June 1st, 1957.

ORDER APPOINTING RECEIVER.

Filed Dec. 18, 1956.

(Title Omitted.)

On This 26th Day of October, 1956, came on to be heard and considered by the Court the verified application of Exchange Bank & Trust Company, formerly known as The Love Field State Bank, Plaintiff herein, for the appointment of a Receiver over the particularly described personal property of the Tubbs Manufacturing Co., Inc., the Defendant, and it appearing from the verified Petition of the Plaintiff, and the Court doth find and adjudge that this Court has jurisdiction of the parties and of the subject matter of this action;

The Court further finds and adjudges that the Plaintiff has a special right and interest in the personal property involved in this action by virtue of valid, subsisting chattel mortgage liens thereon;

The Court further finds and adjudges that this is an action for the foreclosure of such chattel mortgage liens on the hereinafter described personal property;

The Court further finds and adjudges that the Defendant has failed, neglected and refused to perform the condition of said mortgages in that it is in default in compliance with the terms and tenor of the notes secured thereby;

The Court further finds and adjudges that it appears that the mortgaged property is in danger of being lost, removed or materially injured;

The Court further finds and adjudges that said property has in effect been abandoned and that Plaintiff's security is in grave danger of being lost or substantially jeopardized;

The Court further finds and adjudges that unless a Receiver is immediately appointed to take said property into his possession, preserve, protect and save the same, Plaintiff will suffer irreparable injury and damage; and that the Exchange Bank & Trust Company, Plaintiff and Applicant, has filed the bond heretofore ordered by the Court, and that such bond has been approved by the Clerk;

The Court further finds and adjudges that this is one of the cases provided by statute where a Receiver should be appointed without notice.

It is, therefore, Ordered, Adjudged and Decreed by the Court that Leonard Hoffman, a duly qualified person, be and he is hereby appointed Receiver over the following particularly described personal property of the Defendant, to-wit:

Equipment and Machinery as follows:

1 Power Beating Machine, 7290 Z
1 Dreese & Krump power press brake
1 Rapid air press, 1145145
1 Rex Spotwelder 15 KVA

2 David J. Ross punch presses, #0-0 with motors
1 Pressright punch press, 1507
1 Benchmaster 4 tongue punch press, 74812834
1 Whitney 10 ton punch press
1 Air operated angle iron shear
1 Niagra air operated 6' squaring shear
1 Circle shear
1 Le Blend 16" engine lathe, 1400
1 Pexte 36" squaring shear, 11-48
Extra set blades
1 American Chain & Cabling Co. nibling machine
1 Dreis & Krump cornice brake, 4-639
1 Verson 15 ton press brake & dies, 16-48-8748
1 Ingersol Rand air compressor, 234-C4
1 Dayton air compressor
1 Curtis air compressor
2 Devilbiss paint guns
1 Thor paint gun
1 G.E. 250 amp welder, 8818485
1 Delta drill press, 47-5185
1 Vise
1 Taping chuck
1 Set multiple rolls
2 Birdsell elect. welders, 5696, 6304
1 Marquette 250 amp welders
1 Johnson power saw, B1363
1 Dyer spotwelder, 801
4 Acetylene torches
1 Cutting torch
1 Set acetylene & air regulators & gauges
1 Spinning machine
1 Marshalltown rotor shear
1 Companion drill press, 101-03541
1 Dure sanding machine, 651-146-NIL
1 Darra-James circle power saw
1 Dade head

1 Craftsman band saw, 102-01121
1 Sioux sanding machine, portable, 172891
4 Chicago Pneumatic hammers
2 Pneumatic screw drivers
2 Stanley 16 ga. unishears
1 Pexte 36" rolls, 48
1 Thor elect. screwdriver, 1116106
2 Black & Decker 1/4 HD Elect. drills, 1499591, 2749943
2 Black & Decker 5/10 HD elect. drills, 263648, ...
2 Black & Decker, 1/4 LD elect. drills, 2729079, 2924585
1 Buffalo Post drill press
1 Modified squeeze on casters
Assorted dies & diesets
1 set special built rolls
1 Tool grinder
1 Balance stand
1 Royal typewriter, 1 L. C. Smith-Corona typewriter, 1 portable typewriter, 1 desk, file cabinet, chair, typewriter desk, chair metal table & cabinet, check protector, 1 Remington adding machine.
1 Power Beading Machine, Ser. No. 7290Z
1 Dreis & Krump Power Press Brake
1 Rapid Air Press, 1145145
1 Rex 15KVA Spot Welder, 7653
2 David J. Ross #00 Punch Presses, w/motors
1 Press Rite Punch Press w/motor, Ser. No. 1507
1 Bench Master Punch Press w/motor Ser. No. 74812834
1 Whitney 10 ton Punch Press w/motor, Ser. No. 129356351
1 Air Operated Angle Iron Shear
1 Niagara Air Operated 6' Power Squaring Shear
1 Circle Shear 2-3/4 hp motor

1 LaBond 16" Engine Lathe, Ser. No. 1400

1 Pexto 36 Squaring Shear w/extra set of blades, ser. No. 11-48

1 American Chair & Cableing Co. Nibbling Machine

1 Dreis & Krump Hand Bending Brake, Ser. No. 4-639

1 Verson 15 Ton Power Press Brake, Ser. No. 16-48-8748

1 Ingersoll-Rand Air Compressor w/motor, Ser. No. 234-C4

1 Darra James 8" Power Circle Saw w/motor

1 Dado head

1 Craftsman Band Saw, Ser. No. 102-01121

1 Dayton Air Compressor w/motor

1 Curtis Air Compressor

2 DeVilbiss NBC Spray Guns

1 Binks Paint Spray Gun

1 General Electric 250 amp electric Welder—Model 6WK15F-600

1 Delta Bench Model Drill Press, Ser. No. 47-5185

1 Cardinal 6" Drill Press Vise

1 Ettco Model 1-B tapping attachment

1 Set of Multiple Rolls

2 Birdsell Electric Welders, Ser. No. 5696 & 6304

1 Marquette 250 amp Arc Welder

1 Johnson horizontal metal Band Saw, Ser. No. B-1363

1 Dyer Spot Welder, Ser. No. 801

4 Acetylene Torches

1 Cutting Torch

Misc. Acetylene & Air regulating gauges

1 Spinning machine 1-1 2 hp motor

1 Marshalltown Rotary Shear

1 Companion Drill Press w 1 2 hp motor, Ser. No. 101-03541

1 Duro Belt Sanding Machine, Ser. No. 651-146-ML
2 Pneumatic Screw Drivers
1 Stanley Model U216 Electric Unishear, Ser. No. U44844
1 Stanley Model 16A Electric Unishear, Ser. No. U32159F
1 Pexto 36" Slip Roll Machine, Ser. No. 48
1 Thor Electric Screw Driver, Ser. No. 1116106
1 Black & Decker 1/4" heavy duty electric portable drill, Ser. No. 1499591
1 Black & Decker 1/4" heavy duty electric drill, Ser. No. 2749943
1 5/16" Black & Decker heavy duty electric portable drill
1 Black & Decker 5/16" heavy duty portable electric drill, Ser. No. 263648
1 1/4" Black & Decker Special electric portable drill, 2729079
1 1/4" Black & Decker special electric portable drill, (sent out for repairs) Ser. No. 2924585
1 Buffalo 16" Post Drill Press w/ 1/2 hp motor
Misc. assorted dies and die sets
1 Set of special built rolls
1 Black & Decker 6" Portable electric Grinder, Ser. No. 2496847
1 Balance Stand
1 B-Line 6" Bench Grinder
12 Pneumatic Rivet Guns, Ser. Nos. H-31686, A-35340, H-110876, H-28727, A-056199, A-64482, H28721, A49597, H190158, 2S-560314, H-223336, H-121905
1 Black & Decker Utility Portable Electric Drill
1 1/4" Black & Decker heavy duty portable electric drill, Ser. No. 2987101
1 1/4" Black & Decker Utility Portable Electric Drill, Ser. 865986

1 1/4 Black & Decker heavy duty Portable Electric Drill, Ser. No. 2987116

1 1/4" Black & Decker heavy duty Portable Electric Drill, 2987041

1 1/4" Black & Decker heavy duty Portable Electric Drill, Ser. No. 2987118

1 1/4" Black & Decker heavy duty Portable Electric Drill, Ser. No. 2987141

1 1/4" Black & Decker standard Portable Electric Drill, Ser. No. 3052230

1 1/4" Black & Decker utility Portable Electric Drill, Ser. No. 813510

1 1/4" Black & Decker utility Portable Electric Drill, Ser. No. 8D4708

1 1/4" Black & Decker heavy duty Portable electric drill, Ser. No. 3052289

1 1/4" Black & Decker heavy duty Portable electric drill, Ser. No. 3052289

1 Special Metal Roll, Ser. No. 9478

1 Extra Reel for above, Ser. No. 7468

1 Sious 7 disc sander

Black & Decker Model 93 Disc Sander, Ser. No. 2964337

1 Porter Cable A2 Belt Sander, Ser. No. A-249169

1 Craftsman Belt Sander, Ser. No. 2072230

1 Horizontal Air Compressor w/motor. Ser. No. 459858

1 Horizontal Air Compressor, Ser. No. KJ 1854

1 Delta 6" Jointer w/motor, Ser. No. 111-266

1 Delta 14" Band Saw w/motor, Ser. No. AS 2686

1 Craftsman 8" Bench Saw w/motor, Ser. No. 101-02141

All other machinery and equipment now owned or hereafter acquired.

all of said property being situated at 2424 Wyman Street, in Dallas, Dallas County, Texas; and that the said Leonard Hoffman, as Receiver, is authorized, empowered and directed to go upon the premises above described; to take the above described property into his possession; to remove, transport and store the same in a place of safe keeping; to preserve, save and protect the same against loss or damage pending the further orders of this Court; to maintain or defend any actions arising out of his appointment herein, and to employ counsel therefor; and in connection therewith to incur such reasonable expense as may be necessary in carrying out the orders of this Court.

It Is Further Ordered that the said Leonard Hoffman, before entering upon his duties as Receiver herein, shall take oath as required by law, and execute a Bond with good and sufficient sureties in the sum of $3000.00, payable to the Judge of this Court, all parties to this Cause, their successors and assigns, all persons interested in said personal property, and all persons having a claim in or against said property, conditioned as required by law, to be approveo by this Court, that this appointment take effect on the filing of such oath and on the approval by this Court of said Bond, and that within 20 days from this date the said Leonard Hoffman shall return and file with the Court a true and correct inventory of all of the property and assets of the Defendant received by him as such Receiver, and that this appointment shall be in effect until the further order of this Court.

It Is Further Ordered, Adjudged and Decreed by the Court that all persons, firms, or corporations hav-

ing or claiming possession of said personal property, be and they are hereby enjoined and restrained from interfering with or obstructing said Receiver in any manner in the discharge of his duties hereunder.

CHARLES E. LONG, JR.,
Judge of the 134th Judicial
District Court of Dallas
County, Texas.

PETITION IN INTERVENTION.

Filed Dec. 27, 1956.

(Title Omitted.)

To the Honorable Judge of said Court:

Now comes Briggs Weaver Machinery Company, hereinafter called Intervener, having first obtained leave of the Court to file this Petition in Intervention, does hereby file this Petition in Intervention complaining of Exchange Bank & Trust Company, Tubbs Mfg. Co., Inc., Charles L. Brown, Glenn W. Day, and the United States of America and for cause of action would respectfully show the Court the following:

1.

That Briggs Weaver is a private corporation duly incorporated under the laws of the State of Texas with its principal place of business located at Dallas, Texas.

That the Exchange Bank & Trust Co. is a state banking corporation, duly organized and existing under the state banking laws of the State of Texas with its principal place of business located at Dallas, Texas

That Tubbs Mfg. Co., Inc. is a private corporation whose office and principal place of business is located at 2424 Wyman Street, Dallas, Texas, and service of citation may be had upon its president, W. O. Tubbs who resides at 2507 West Lovers Lane, Dallas, Texas, or its vice-President, Solon A. Tubbs, who resides at 3728 Bolivar Drive, Dallas, Texas.

That Charles L. Brown and Glenn W. Day are residents of Dallas County, Texas and service of citation may be had upon them at 3183 McKinney, Dallas, Texas.

That service of Citation may be had upon the United States of America by serving the Assistant United States Attorney, Mr. John Ford, Third Floor, Federal Building, Dallas, Texas, and by sending a copy of this Petition in intervention and Citation by registered mail to the Attorney General of the United Staes, Department of Justice, Washington 25, D. C.

2.

That on or about the 18th day of February, 1955, Tubbs Mfg. Co., Inc., for value received, executed and delivered to Intervener its promissory note being dated on such day and year and therein promised intervener to pay it, or its Order, at its office in Dallas Texas, the sum of $2,784.00, which included principal in the amount of $2,650.48 and interest from said date

at the rate of six percent (6%) per annum, payable in monthly installments of $232.00, the first such installment being due and payable on or before March 18, 1955 and a like amount the 18th day of each month thereafter until said note was fully paid; that a true copy of said note is attached hereto, marked "Exhibit A", and made a part hereof for all purposes. That said note provided that all past due principal and interest should bear interest at the rate of ten percent (10%) per annum and that in the event it is placed in the hands of an attorney for collection or suit be brought on same, that the maker would pay the holder twenty percent (20%) additional on the principal and interest then due as attorneys' fees.

3.

That Tubbs Mfg. Co., Inc. paid Intervener ten installments of $232.00 each on the note described above in paragraph 2 but although intervener has often demanded that it pay the remaining balance, said Tubbs Mfg. Co., Inc. has failed and refused to pay the remaining two installments, the last of which was payable on or before February 18, 1956. That there is presently owing on said note the sum of $464.00 plus ten percent (10%) interest since February 18, 1956, amounting to $32.87 or a total of $496.87 principal and interest.

4.

That on or about the 28th day of April, 1955, Tubbs Mfg Co., Inc., for value received, executed and delivered to Intervener its promissory note of said day and year wherein it promised to pay Intervener, or

Order, the sum of $950.52, which included principal in the amount of $896.79 and interest from said date at six percent (6%) per annum for one year payable in monthly installments of $79.21, the first installment being due and payable on or before May 28, 1955, and a like amount on or before the 28th day of each month until said note was fully paid; that a true copy of said note is attached hereto, marked "Exhibit B" and made a part hereof for all purposes.

5.

That on the 28th day of April, 1955, Tubbs Mfg. Co., Inc. executed and delivered to Intervener its contract of sale and chattel mortgage whereby it agreed that title to the hereinafter described property should remain in Intervener until the note therein described had been paid and that the mortgage agreement therein was to secure said note and any renewals and any other indebtedness for which Tubbs Mfg. Co., Inc. was or should become liable to Intervener:

1—#7-TD, 7 1/2 MP, Ingersoll-Rand Compressor, Mounted, Complete, 220 Volt 3 Phase, 60 Cycle 200# Pressure Constant Speed Control Serial No.

1—#CR-7006-D101B3 General Electric Magnetic Starter with #81-D559 Heater.

1—#CR-2960-SY103A Hand-Off-Auto Slector Switch.

That a true copy of said contract of sale and chattel mortgage is attached hereto and marked "Exhibit C" and made a part hereof for all purposes.

6.

That on or about the 10th day of February, 1956, Tubbs Mfg. Co., Inc., for value received, executed and delivered to Intervener its promissory note where by it promised to pay Intervener, or Order, the sum of $2,502.00, which included principal in the amount of $2,360.51 and six percent (6%) interest for one year, payable in monthly installments of $208.50, the first installment being due and payable on or before the 15th day of March, 1956 and a like amount due and payable on or before the 15th day of each month thereafter until said note was fully paid. That said note provided that upon default in making any such monthly installment as therein promised, at the holder's option, same should mature and become due and payable at once and provided for waiver of presentment for payment and demand; that on November 1, 1956, Intervener declared the full amount of said note to be matured and immediately due and payable because of the hereinafter describde default of said maker; that said note further provided that the maker would pay ten percent (10%) interest on all past due principal and interest and in the event it was placed in the hands of an attorney for collection it would pay the holder thereof twenty percent (20%) additional on the principal and interest then due thereon as attorneys' fees. That a true copy of said note is attached hereto, marked "Exhibit D" and made a part hereof for all purposes.

7.

That although Intervener has often made demand upon Tubbs Mfg. Co., Inc. to pay said note described

above in paragraph 6, it has failed and refused to pay the same or any part thereof and that there is now owing on said note said principal sum of $2,360.51 plus interest to date of $106.20 or a total of $2,466.71 principal and interest.

8.

That because of the wrongful failure of Tubbs Mfg. Co., Inc. to pay the unpaid principal and interest on the above described notes, Intervener has placed same in the hands of the undersigned attorneys for collection and has agreed to pay said attorneys said twenty percent (20%) of unpaid principal and interest as their attorneys, hence said Tubbs Mfg. Co., Inc. is therefore liable to Intervener for attorneys' fees in the amount of $99.23 on the note described above in paragraph 2, and $493.34 on the note described above in paragraph 6.

9.

That by virtue of the foregoing, Tubbs Mfg. Co., Inc. is justly indebted to Intervener in the following amounts:

Unpaid principal, interest and attorneys fees on its note executed February 15, 1955	$ 596.24
Unpaid principal, interest and attorneys fees on its note dated February 10, 1956	$ 2,960.05
Total	$ 3,556.29

10.

That the above described chattel mortgage created a lien, which is still subsisting against said property described above, to secure payment of said notes described herein and all amounts due thereon. That said chattel mortgage was duly recorded in the Chattel Mortgage Records of Dallas County, Texas on the third day of May, 1955, and Intervener claims a first lien on the above described personal property to secure its debt above described in the sum of $3,556.29.

11.

That Charles L. Brown and Glenn W. Day are claiming some right, title or lien against said property, the exact nature of said being unknown to Intervener, but none of them a valid claim superior to Intervener's lien; that said claims of said persons constitute a cloud upon Intervener's superior lien against said property.

12.

That the United States of America is claiming certain taxes due and payable by Tubbs Mfg. Co., Inc. in the total amount of $8819.72 and has filed its tax lien therefor in the Federal Tax Lien Records in the office of the County Clerk, Dallas County, Texas, in Volume 24 page 368. That said tax liens constitute a cloud upon the Intervener's superior lien against the above described property.

13.

That this action against the United States of America is brought pursuant to Section 2410, Title 28, United States Code Annotated.

14.

That Excahnge Bank and Trust Company is claiming some right, title or lien against the above described property, the exact nature of same being unknown to Intervener, but none of them a valid claim superior to Intervener's lien.

15.

That this Honorable Court has heretofore appointed Mr. Leonard Hoffman as a receiver over all of the machinery and equipment belonging to Tubbs Mfg. Co., Inc. and has ordered said receiver to preserve, save and protect the saine against loss and damage pending the further order of this Court. Your Intervener further states, as hereinbefore alleged, that it is the owner and holder of a valid subsisting chattel mortgage lien on the above described personal property and has a right to, and interest in the same; that the conditions of said mortgage have not been performed and that the mortgaged personal property will suffer waste and deterioration, thereby causing your Intervener to suffer irreparable injury and loss unless the Court orders the sale of said personal property.

16.

Intervener would further show the Court that said Tubbs Mfg. Co., Inc. has ceased operation, has gone out of business, and has for all material purposes abandoned all of its property; that the above named officers have fraudulently managed and controlled it and by reason of said actions the assets of said corporation have been dissipated and with the exception of its machinery and equipment which is now in the custody of said receiver, the said officers are continuing to dissipate the assets of said corporation and that a necessity exists that a receiver be appointed over all of the assets of the corporation and that unless a receiver is appointed the interest of your intervener will be irreparably injured and lost in that its total claim against said corporation is $3,556.29 and the value of the above described personal property does not exceed $500.00. That no other remedy, legal or equitable, exists to protect the rights of Intervener except the appointment of a receiver of all of its assets.

17.

Intervener further alleges that the machinery and equipment of said Tubbs Mfg. Co., Inc., excepting the above described personal property, is of a reasonable value far in excess of the $1,580.23 claimed by Exchange Bank and Trust Company to be secured by a lien on the machinery and equipment described in its original petition; that said machinery and equipment will likewise suffer waste and deteriorate during the pendency of this suit and that the receiver should be authorized to sell all of said machinery

and equipment of said corporation and that the money be deposited in the Registry of this Court pending final determination of all of the respective claims of all the parties herein.

Wherefore, Premises Considered, Intervener prays that all of the parties named above be cited to appear and answer herein and, that upon a final hearing hereof, that Intervener have judgment against Tubbs Mfg. Co., Inc. for $3,556.29, the amount of its indebtedness herein alleged plus ten percent (10%) interest from date of filing, together with foreclosure of its chattel mortgage lien on the above described property and for order of sale; Intervener further prays for a decree holding that none of the defendants herein hold any lien or title to the property above described superior to that of Intervener's lien, and for judgment removing cloud from title as alleged; and for its costs and for such other and further relief to which Intervener may be entitled either at law or in equity.

Intervener further prays that the Court enlarge the powers heretofore granted its receiver to seize and possess all of the assets of said Tubbs Mfg. Co., Inc. and that all of the parties be given notice to appear on a day certain before this Court to show cause, if any they have, why the Court should not order the receiver to sell all of said machinery and equipment belonging to Tubbs Mfg. Co., Inc.

BRADFORD & PRITCHARD,
By W. A. PRITCHARD.
Attorneys for Intervener.

505 North Ervay, Room 904.
Dallas 1, Texas.
Ri-7-5194.

State of Texas,
County of Dallas.

Before me, the undersigned Notary Public, on this day did personally appear W. A. Pritchard, known to me to be one of Intervener's attorneys and being by me first duly sworn, stated on his oath that the allegations above contained were true and correct.

W. A. PRITCHARD.

Sworn to and subscribed before me this 5th day of November, 1956, to certify which witness my hand and seal of office.

SUE TRONE CUMMINS,
Notary Public, Dallas County.

Note:

Pages 35 - 37 are at
start of card 2.

PETITION FOR REMOVAL.

Filed Nov. 28, 1956.

(Title Omitted.)

To the Honorable, Judge of said Court:

Comes Now the United States of America, hereinafter called petitioner, and petitions this Court for removal of the above-entitled cause, now pending as Cause No. 17-868-G in the District Court for the 134th Judicial District of Texas, sitting at Dallas. In support of this petition petitioner would respectfully show:

1.

On the 9th day of November, 1956, the petitioner was served with a copy of the petition in intervention filed by the Briggs Weaver Machinery Company in the above numbered and entitled cause of action wherein the United States of America is named as a party defendant to said cause pursuant to the provisions of Title 28, Section 2410(a), U.S.C., said cause being an action to foreclose mortgages upon certain personal property on which the United States claims a lien for federal taxes. A copy of said petition in intervention is attached hereto and made a part hereof as Exhibit 1. Accompanying said petition intervention was a citation to the United States of America as a party defendant commanding it to appear before the 134th Judicial District Court and answer to said petition within sixty days after the date of service of same. A copy of said citation is attached hereto and made a part hereof as Exhibit 2. Also accompanying said petition was an order and citation

to appear before the Judge of the 134th Judicial District Court of Dallas, Texas, at 9:00 a.m. on November 20, 1956, to show cause why the Receiver herein should not take possession and sell all the machinery and equipment belonging to Tubbs Mfg. Co., Inc. A copy of said citation and said order to show cause are attached hereto and made a part hereof as Exhibits 3 and 4, respectively. Also attached hereto as Exhibit 5 is a copy of the order signed November 23, 1956, providing for the Receiver to take charge of all assets of the Tubbs Mfg. Co., Inc., and sell same at public sale which has been received by this office.

2.

Petitioner is entitled to removal of said action pursuant to the provisions of Title 28, Section 1444, U.S.C.

3.

Exhibits 1, 2, 3, 4 and 5 attached hereto and made a part hereof constitute all processes, pleadings and orders served upon petitioner in said action and cause in said State Court as aforesaid.

Wherefore, petitioner prays that said action be removed from said State Court into this Court for a trial and determination as provided by Title 28, Section 1444, U.S.C.

HEARD L. FLOORE,
(Heard L. Fllore),
United States Attorney,
JOHN C. FORD,
(John C. Ford),
Assistant United States Attorney.

State of Texas,
County of Dallas.

Subscribed and sworn to before me this the 28th day of November, 1956.

DOROTHY ATKINS,
(Seal) Notary Public in and for Dallas County, Texas.

My Commission Expires: June 1, 1957.

NOTICE.

Filed Nov. 28, 1956.

(Title Omitted.)

To: Blakley & Walker
1307 Pacific Avenue
Dallas, Texas
Attn: Lee Shoptaw
Attorneys for Exchange Bank & Trust Co.

To: Bradford & Pritchard
505 North Ervay Street
Dallas, Texas
Attn: W. A. Pritchard
Attorneys for Briggs Weaver Machinery Co.

To: Joe Geary
Vaughn Building
Dallas, Texas,
Attorney for Charles L. Brown & Glenn W. Day

To: D. M. Teague
Texas Bank Building
Dallas, Texas,
Attorney for Tubbs Mfg. Co., Inc.

Please take notice that we have on this the 28th day of November, 1956, filed a petition in the aforesaid Court in behalf of the United States of America for removal of the action now pending in the 134th Judicial District Court of Dallas County, Texas, entitled Exchange Bank & Trust Co., et al., v. Tubbs Mfg. Co., Inc., et al., No. 17,868-G, to the aforesaid Court, and at the same time filed in this Court copies of the pleadings and orders received by the United States of America in said action in the State Court; and

Further take notice that we have filed a copy of said petition for removal on this date with the Clerk of the 134th Judicial District Court of Dallas County, Texas. A copy of said petition for removal is attached to this notice and herewith served upon you.

HEARD L. FLOORE,
(Heard L. Floore),
United States Attorney,
JOHN C. FORD,
(John C. Ford),
Assistant United States Attorney.

ANSWER TO PETITION IN INTERVENTION.

Filed Dec. 10, 1956.

(Title Omitted.)

Comes Now Defendant United States of America, by and through Heard L. Floore, United States Attorney for the Northern District of Texas, and says

in reply to the petition in intervention of the Briggs Weaver Machinery Company filed herein:

First Defense.

With respect to the allegations contained in the petition in intervention of Briggs Weaver Machinery Company, Defendant United States of America pleads as follows:

1.

Defendant United States of America admits the allegations in paragraph 1 insofar as they pertain to such defendant; alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 16 and 17.

2.

Defendant United States of America admits the allegations in paragraphs 12 and 13; defendant admits the allegation in paragraph 15 that Mr. Leonard Hoffman has heretofore been appointed a receiver over all of the machinery and equipment belonging to Tubbs Mfg. Co., Inc., and said receiver has been ordered to preserve, save and protect same against loss and damage pending further order of the Court, but this defendant says that it is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in said paragraph 15.

Second Defense.

For further answer herein Defendant United States of America affirmatively pleads and shows to the Court:

1.

That excise taxes in the amount of $2,726.16, together with penalty in the amount of $2,170.96, and interest in the amount of $606.83, (totaling $5,503.95) for the period November 1, 1951, through and including June 30, 1953, and withholding taxes in the amount of $3,307.63, together with interest in the amount of $8.14, (totaling $3,315.77) for the second quarter of 1956, were duly and legally assessed against Tubbs Mfg. Co., Inc., by the District Director of Internal Revenue for the Dallas Disrict of Texas. The assessment list for said taxes was signed and certified by the District Director of Internal Revenue for the Dallas District of Texas on August 15, 1956, and the said District Director duly sent notice and demand for payment of said taxes to the said Tubbs Mfg. Co., Inc., by mail on August 15, 1956, but the said Tubbs Mfg. Co., Inc., has failed and refused to pay all or any part of the taxes so assessed, together with interest thereon, from the date of demand. Pursuant to Sections 6321, 6322 and 6323 of the Internal Revenue Code of 1954, the United States of America has a lien for the payment of the aforesaid assessment, penalty and interest at the rate of six per cent per annum until paid effective August 15, 1956, on all property and rights to property belonging to the said Tubbs Mfg. Co., Inc. Notice of the aforesaid tax lien, being Tax Lien No. E-1394 was filed by the District Di-

rector of Internal Revenue for the Dallas District of Texas in the office of the County Clerk of Dallas County, Texas, on October 15, 1956, and was duly recorded in Volume 24, Page 368, of the Federal Tax Lien Records of Dallas County, Texas.

Third Defense.

For further additional answer herein Defendant United States of America affirmatively pleads and shows to the Court:

I.

That Defendant Tubbs Mfg. Co., Inc., has heretofore suffered the appointment of a receiver to take charge of all its property in that by an order of the Court entered in this cause on November 23, 1956, Leonard Hoffman was appointed general receiver to take charge of all the assets of Tubbs Mfg. Co., Inc., and was further ordered to sell all of the assets belonging to Tubbs Mfg. Co., Inc., at a public sale to the highest bidder for cash, and the said Leonard Hoffman qualified as such receiver and in his capacity as such receiver took charge of all of the property of Defendant Tubbs Mfg. Co., Inc., and now has charge and possession of same and in such capacity has causd to be issued a notice of public sale of said assets on December 27, 1956. That on and prior to said date, November 23, 1956, and at the time when the said receiver took charge and possession of the property of the said Tubbs Mfg. Co., Inc., the said Tubbs Mfg. Co., Inc., was insolvent and unable to pay its debts as they matured

2.

That under the provisions of Section 3466 R.S., Section 191 of Title 31, U.S.C.A., this defendant, United States of America, has an absolute priority to be first satisfied for its tax claims against the Tubbs Mfg. Co., Inc., as heretofore set out from and out of the said property and assets of Tubbs Mfg. Co., Inc., taken charge of by the said receiver, such priority being superior to the rights of any and all other claimants herein and said claims of this defendant, United States of America, should be paid prior to all other debts or claims of any nature of or against the said Tubbs Mfg. Co., Inc., or said receivership.

Wherefore, premises considered, Defendant United States of Ameria prays for judgment against Defendant Tubbs Mfg. Co., Inc., for $8,819.72 together with interest thereon at the rate of six per cent per annum from August 15, 1956, for internal revenue taxes due the United States of America, and that this defendant's claim for said sum of money be adjudged to be a prior claim entitled to priority in payment over all other debts or claims of or against the said defendant, Tubbs Mfg. Co., Inc., or the receivership, and that it be adjudged by the Court that said indebtedness is secured by a prior lien upon all of the assets of the said defendant, Tubbs Mfg. Co., Inc., and of the receivership and that said prior lien in favor of this defendant, United States of America, be foreclosed by this Court and that the said Leonard Hoffman, receiver, be required to pay this defendant the said sum of money and interest thereon out of the funds and assets of the defendant, Tubbs Mfg. Co., Inc., in his possession; and this defendant further

prays for costs of suit, and for such other and further relief to which it may be entitled.

HEARD L. FLOORE,
United States Attorney.
JOHN C. FORD,
Assistant United States Attorney.

A copy of the foregoing answer has this the ... day of December, 1956, been mailed to:

Blakley & Walker
1307 Pacific Avenue
Dalias, Texas
Attn: Lee Shoptaw
Attorneys for Exchange Bank & Trust Co.

Bradford & Pritchard
505 North Ervay Street
Dallas, Texas
Attn: W. A. Pritchard
Attorneys for Briggs Weaver Machinery Co.

Joe Geary
Vaughn Building
Dallas, Texas
Attorney for Charles L. Brown & Glenn W. Day

D. M. Teague
Texas Bank Building
Dallas, Texas
Attorney for Tubbs Mfg. Co., Inc

JOHN C. FORD,
Assistant United States Attorney.

COMPLAINT IN INTERVENTION OF FIRST NATIONAL BANK IN DALLAS.

Filed Dec. 17, 1956.

(Title Omitted.)

The Intervener above named, by leave of Court first had and obtained, files this complaint of intervention against all other parties in this cause and alleges:

1. On November 2, 1955, Tubbs Mfg. Company executed its promissory note whereby it promised to pay to Curtis Parker Motors, Inc., or its order, in Dallas, Texas, the principal sum of One Thousand, Six Hundred Fifty-one and 92 100 Dollars ($1,651.92) in twenty-four (24) consecutive monthly installments of Sixty-eight and 83 100 Dollars ($68.83) each, beginning on December 2, 1955, plus ten per cent (10%) of such principal amount as attorney's fees if such note be placed with an attorney for collection. Such note and its terms thereof were incorporated in a conditional sales contract, a true and correct photostatic copy of which is attached hereto, marked Exhibit A, and made a part hereof for all purposes. Intervener further alleges that said note and conditional sale contract were duly sold, transferred and assigned to it for a valuable consideration by Curtis Parker Motors, Inc., on or about December 2, 1955; and that it is now the present legal owner and holder of such note. Intervener further alleges that the monthly installments in the sum of Sixty-Eight and 83 100 Dollars ($68.83) each, which were due for the months of October, November and December have not been paid

by Tubbs Mfg. Co., Inc., and that in accordance with the terms of said note, Intervener has declared the total balance principal in the sum of Nine Hundred Sixty-three and 62/100 Dollars ($963.62) immediately due and owing, plus ten per cent (10%) thereon as attorney's fees.

2. Intervener further alleges that the consideration it paid to Curtis Parker Motors, Inc., for the note described above was for the balance of the purchase price of a 1956 model Ford pick-up truck and that Tubbs Mfg. Co. executed a chattel mortgage lien on such truck to secure the payment of such note. That such lien and mortgage is duly set forth and recorded on the original certificate of title to said truck as issued by the Motor Vehicle Division of the State Highway Department of Texas. Such title certificate reflects that such lien is in favor of this Intervener, a true and correct copy of which is attached hereto and marked Exhibit B and made a part hereof for all purposes.

3. Intervener further alleges that since it is the legal owner and holder of the above described note and chattel mortgage lien on the truck described in the certificate of title attached hereto as Exhibit B, that it has an existing, prior and superior lien as against all parties to this cause to said truck or the proceeds of the sale thereof.

Wherefore, premises considered, this Intervener prays for judgment against Tubbs Mfg. Co., Inc., for the sum of Nine Hundred Sixty-three and 62/100 Dollars ($963.62) and for ten per cent (10%) of such sum as attorney's fees, and for foreclosure of its chattel

mortgage lien on the Ford turck described in the certificate of title attached hereto and that it be adjudged by the Court that such chattel mortgage lien in favor of this Intervener is a prior and existing lien as against all other liens or claims asserted or owned by any other party to this cause to said Ford truck and this Intervener further prays that in the event the receiver sells said truck for cash that a prior and superior lien be impressed on such funds so received by him for the sale of said truck in favor of this Intervener and that said receiver be ordered to pay such funds over to this Intervener in such amount as is necessary to discharge the judgment and lien in favor of this Intervener and this Intervener further prays for all costs of suit and for such other and further relief to which it may be entitled.

COKE & COKE.
By CLINTON FOSHEE.
Attorneys for Intervener.
1400 First National Bank Building.
Dallas, Texas.

ORDER.

Filed Dec. 14, 1956.

(Title Omitted.)

On this day came on to be heard the Order to Show Cause issued by the Court on November 7, 1956, directed to Exchange Bank and Trust Company, Tubbs Mfg. Co., Inc., the United States of America, Charles L. Brown and Glenn W. Day, and came said

parties by their attorneys, and came Briggs Weaver Machinery Company by its attorney, all of said parties announce ready for hearing; and the Court having examined the pleadings and heard the evidence and argum nts of counsel and being of the opinion that the application of Briggs Weaver Machinery Company for the immediate appointment of a general Receiver to take charge of the assets of Tubbs Mfg. Co., Inc. not already in the possession of the Receiver herein presents proper grounds therefor and for the granting of the other relief shown in this order;

It Is Therefore Ordered, Adjudged and Decreed by the Court that Leonard Hoffman be appointed general Receiver to take charge of all of the assets of Tubbs Mfg. Co., Inc.;

It Is Further Ordered, Adjudged and Decreed by the Court that said Receiver post a bond in the sum of $3,000.00 according to law and that he shall file an inventory within 20 days of the property so received by him;

It Is Further Ordered, Adjudged and Decreed by the Court that said Receiver sell all of the assets belonging to Tubbs Mfg. Co., Inc. at a public sale, of which all interested parties shall have received written notice of the time and place thereof at least three weeks in advance, to the highest bidder for cash and that said money be deposited in the Registry of this Court and that the machinery and equipment on which Briggs Weaver Machinery Company claims a lien, described below, be sold separate from the remainder of said assets:

1—#7-TD, 7 1/2 HP, Ingersoll-Rand Compressor, mounted, complete, 220 Volt, 3 Phase, 60 Cycle 200# Pressure Constant Speed Control, Serial No.

1—#CR-7006-D101B3 General Electric magnetic Starter with #81-D559 Heater.

1—CR-2960-SY103A Hand-Off-Auto Selector Switch.

Signed this 23rd day of November, 1956.

CHARLES E. LONG, JR.,
Judge.

Approved:

BLAKLEY & WALKER,
Attorney for Exchange Bank & Trust Co.
By (S.) LEE SHOPTAW,
UNITED STATES OF AMERICA,
By JOHN C. FORD,
Assistant U. S. District Attorney.

BRADFORD & PRITCHARD,
Attorneys for Briggs Weaver Machinery Co.,
By (S.) W. A. PRITCHARD.
(S.) JOE GEARY,
(Joe Geary),
Attorney for Charles L. Brown & Glenn W. Day.
(S.) D. M. TEAGUE,
(Spud Teague),
Attorney for Tubbs Mfg. Co., Inc.

ANSWER OF TUBBS MFG. CO.

Filed Dec. 20, 1956.

(Title Omitted.)

Now Comes Tubbs Mfg. Co., Inc., defendant in the above numbered and entitled cause, by and through its attorney, and enters its appearance in said cause; and admits that the amount of the liabilities of this defendant exceeds the amount of the value of this defendant's assets and that this defendant is unable to pay its obligations as they become due and consents to the appointment of a receiver as prayed for in plaintiff's petition, and offers no objection thereto.

D. M. TEAGUE,
(D. M. Teague),
Attorney for Tubbs Mfg. Co., Inc.

Texas Bank Building,
Dallas, Texas.

Filed Dec. 14, 1956.

(Title Omitted.)

On this day came the parties by their attorneys and announced to the Court that while this case was pending in the 134th Judicial District Court of Dallas County, Texas, said Court appointed Mr. Leonard Hoffman as Receiver of all of the assets of Tubbs Mfg. Co., Inc. and that said Receiver had been authorized to take charge of all of the assets of said

corporation and to sell the same to the highest bidder for cash, at a public sale to be held on December 27, 1956, at 10:00 o'clock A. M. at 2424 Wyman, Dallas, Texas; that said attorneys advised the Court that said Receiver was a suitable person for said responsibility and said parties urged this Court to approve the appointment of Mr. Leonard Hoffman as Receiver and that this Court approve the above described action of said Receiver and that this Court authorize said Receiver to sell all of the assets of said Tubbs Mfg. Co., Inc., on the above mentioned date, free and clear of all liens, to the highest bidder for cash; and it appearing to the Court that it should approve the above mentioned request of the parties herein;

It Is Therefore Ordered, Adjudged and Decreed by the Court that Leonard Hoffman be, and he is hereby appointed Receiver of all of the assets of Tubbs Mfg. Co., Inc., with all of the authority that he could have had, had he been originally appointed by this Court in such capacity;

It Is Further Ordered, Adjudged and Decreed by the Court that said Leonard Hoffman sell all of the assets of Tubbs Mfg. Co., Inc. to the highest bidder for cash at a public sale to be held on December 27, 1956, at 10:00 o'clock A. M., at 2424 Wyman St., Dallas, Texas, said assets to be sold free and clear of all liens, and that the money received from the sale of said assets be deposited in the registry of this Court.

Signed this 14 day of December, 1956.

WM. H. ATWELL,
Judge.

Approved:

BLAKLEY & WALKER,
Attorney for Exchange Bank & Trust Co.,
By LEE SHOPTAW.

UNITED STATES OF AMERICA,
By JOHN C. FORD,
Assistant U. S. District Attorney.

BRADFORD & PRITCHARD,
Attorneys for Briggs Weaver Machinery Co.,
By W. A. PRITCHARD.

JOE GEARY,
(Joe Geary),
Attorney for Charles L. Brown & Glenn W Day.

D M. TEAGUE,
(Spud Teague),
Attorney for Tubbs Mfg. Co., Inc.

ANSWER TO PETITION IN INTERVENTION.

Filed Dec. 10, 1956.

(Title Omitted.)

Comes Now City of Dallas, Texas, a municipal corporation by and through Norman Register, its duly acting and qualified Assessor and Collector of Taxes

and says in reply to the Petition in Intervention of the Briggs Weaver Machinery Company filed herein:

First Defense.

With respect to the allegations contained in the Petition in Intervention of Briggs Weaver Machinery Company, Intervener, City of Dallas, pleads as follows:

1.

Intervener, City of Dallas, admits the allegations in Paragraph 1 of Intervener's Petition; alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16 and 17.

2.

Intervener City of Dallas, admits the allegations in Paragraph 12 insofar as it pertains to the amount of taxes due to the Defendant, United States of America, and the filing of a tax lien by the United States of America, but denies that Intervener, Briggs Weaver Machinery Company, has a superior lien to that of the Intervener, City of Dallas; Intervener, City of Dallas admits the allegation in paragraph 15 that Mr. Leonard Hoffman has heretofore been appointed a receiver over all of the machinery and equipment belonging to Tubbs Mfg. Co., Inc., and said receiver has been ordered to preserve, save and protect same against loss and damage pending further order of the Court, but this Intervener says that it is without knowledge or information sufficient to form a belief

as to the truth of the other allegations contained in said paragraph 15.

Second Defense.

For further answer herein, Intervener, City of Dallas, affirmatively pleads and shows to the Court:

1.

That the Defendant, Tubbs Manufacturing Company, Inc., a corporation, is indebted to the Intervener, City of Dallas, and Dallas Independent School District, for advalorem taxes on personal property consisting of goods, wares, merchandise, machinery and other equipment, office furniture and fixtures, and automotive equipment for the year and in the amount as follows:

Year	To Whom Assessed	Amount
1955	Tubbs Mfg. Co., Inc.	
	(Business Roll)	$51.38
	(Auto Roll)	11.25
1956	Rubbs Mfg. Co., Inc.	
	(Business Roll)	53.16
	(Auto Roll)	19.40

Certified copies of the Tax Roll of the City of Dallas for the years 1955 and 1956 are attached hereto as Exhibits "A" and "B" showing the assessment and the amount of the indebtedness of the Defendant, Tubbs Manufacturing Company, Inc., to the Intervener, City of Dallas, a municipal corporation, and the Dallas Independent School District.

2.

That these taxes are due and owing to the Intervener, City of Dallas, and the Dallas Independent School District and are not entitled to any off sets or credits, and remain unpaid.

Third Defense.

For further additional answer herein, Interevener, City of Dallas, affirmatively pleads and shows to the Court:

1.

That Defendant Tubbs Mfg. Co., Inc., has heretofore suffered the appointment of a receiver to take charge of all its property in that by an order of the Court entered in this cause on November 23, 1956, Leonard Hoffman was appointed general receiver to take charge of all the assets of Tubbs Mfg. Co., Inc., and was further ordered to sell all of the assets belonging to Tubbs Mfg. Co., Inc., at a public sale to the highest bidder for cash, and the said Leonard Hoffman qualified as such receiver and in his capacity as such receiver took charge of all of the property of Defendant Tubbs Mfg. Co., Inc., and now has charge and possession of same and in such capacity has caused to be issued a notice of public sale of said assets on December 27, 1956.

2.

That said taxes are secured by a general lien, first, prior and superior to all other liens, under the law

of the State of Texas and Section 194 of the Home Rule Charter of the City of Dallas, which reads as follows:

"A lien is hereby created on all property, personal and real, in favor of the City of Dallas, for all taxes, ad valorem, occupation or otherwise. Said lien shall exist from January 1st in each year until the taxes are paid. Such lien shall be prior to all other claims, and no gift, sale, assignment or transfer of any kind, or judicial writ of any kind, can ever defeat such lien, but the Assessor and Collector of Taxes can pursue such property, and whenever found out, may seize and sell enough thereof to satisfy such taxes.

"All persons or corporation owning or holding personal property or real estate in the City of Dallas on the first day of January of each year shall be liable for all municipal taxes levied thereon for such year. * * *"

and by virtue of the above Charter provision the lien of the Intervener, City of Dallas, is prior, paramount and superior to the lien of any and all other Claimants herein and said claims of this Intervener, City of Dallas, should be paid prior to all other debts or claims of any nature of or against the Tubbs Manufacturing Co., Inc., or said receivership.

Wherefore, Premises Considered, Intervener, City of Dallas, prays for judgment against Defendant, Tubbs Manufacturing Co., Inc., for $135.19, with penalty and interest thereon as provided by law, for taxes due the City of Dallas, and that this Intervener's claim for said sum of money be adjudged to be a prior claim

entitled to priority in payment over all other debts or claims of or against said Defendant, Tubbs Manufacturing Company, Inc., or the receivership, and that it be adjudged by the Court that said indebtedness is secured by a prior lien upon all of the assets of the said Defendant, Tubbs Manufacturing Company, Inc., and of the receivership and that said prior lien in favor of this Intervener, City of Dallas, be foreclosed by this Court and that the said Leonard Hoffman, receiver, be required to pay this Defendant the said sum of money and interest thereon out of the funds and assets of the Defendant, Tubbs Manufacturing Co., Inc., in his possession, and this Intervener further prays for costs of suit and for such other and further relief to which it may be entitled.

H. P. KUCERA.
R. A. McBEAN.
TED P. MacMASTER
(Ted P. MacMaster),
Attorneys for Intervener,
City of Dallas.

501 City Hall;
Dallas, Texas.

Copies of the foregoing Motion and Answer to Petition in Intervention have this the 13th day of December, 1956, been mailed to:

Blakley & Walker
1307 Pacific Avenue
Dallas, Texas
Attn: Lee Shoptaw
Attorneys for Exchange Bank & Trust Co.

Bradford & Pritchard
505 North Ervay Street
Dallas, Texas
Attn: W. A. Pritchard
Attorneys for Briggs Weaver Machinery Co.

Joe Geary
Vaughn Building
Dallas, Texas
Attorney for Charles L. Brown & Glenn W. Day

D. M. Teague
Texas Bank Building
Dallas, Texas
Attorney for Tubbs Manufacturing Co., Inc.

Heard L. Floore
United States Attorney
Federal Building
Dallas, Texas

Attorney for Charles L. Brown & Glenn W. Day

D M Teague
Texas Bank Building
Dallas, Texas

TED P MacMASTER
(Ted P MacMaster)
Assistant City Attorney
City of Dallas

PLAINTIFF, EXCHANGE BANK & TRUST COMPANY'S ANSWER TO PETITIONS IN INTERVENTION.

Filed Dec. 27, 1956.

(Title Omitted.)

Comes Now Plaintiff, Exchange Bank & Trust Company, and says in reply to the Petitions in Intervention filed by the various Interveners herein named, as follows:

First Defense.

With respect to the affirmative allegations contained in the Second Defense by the United States of America in its Answer to Petition in Intervention filed herein on the 10th day of December, 1956, Plaintiff, Exchange Bank & Trust Company pleads as follows:

1.

Plaintiff, Exchange Bank & Trust Company, alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of said Second Defense; but said Plaintiff asserts that the alleged lien of the United States of America for taxes, penalty and interest, if any it has, against the Tubbs Mfg. Co., Inc., is later in time, junior in rank and inferior in priority to the duly executed, filed and recorded chattel mortgage liens held by Exchange Bank & Trust Company with respect to the property of the Defendant, Tubbs Mfg. Co., Inc.

2.

This Plaintiff admits the allegations of Paragraph 1 of the Third Defense of the Defendant, United States of America.

3.

This Plaintiff denies each and all of the allegations of Paragraph 2 of said Third Defense of the Defendant, United States of America, and this Plaintiff particularly denies that the United States of America has an absolute priority to be first satisfied for its tax claims agains the Tubbs Mfg. Co., Inc. under the provisions of 3466 R. S., Sec. 191 of Title 31, U. S. C. A. or any other statute or statutes; and this Plaintiff further denies that the claim of the United States of America is superior to the rights of this Plaintiff, Exchange Bank & Trust Company; or that the claims of the United States of America should be paid prior to all other debts or claims of any nature against the said Tubbs Mfg Co., Inc., or the receiver thereof

Second Defense

With respect to the allegations contained in the Complaint in Intervention of the First National Bank in Dallas, this Plaintiff avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1, 2 and 3 of the said Complaint in Intervention of the First National Bank in Dallas; but this Plaintiff alleges that the lien and mortgage asserted by said First National Bank in Dallas is junior and inferior to the lien and mortgage of this Plaintiff insofar as, and

to the extent that, said lien and mortgage asserted by said First National Bank in Dallas is or may be sought to be applied to the property of the Defendant, Tubbs Mfg. Co., Inc., or its receiver, which is included in or covered by, the prior existing chattel mortgages of this Plaintiff, Exchange Bank & Trust Company.

Third Defense

With respect to the affirmative allegations contained in the Petition in Intervention of the City of Dallas, Texas, filed herein on the 17th day of December, 1956, this Plaintiff, Exchange Bank & Trust Company pleads as follows:

1

This Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1 and 2 of the Second Defense of Intervener City of Dallas.

This Plaintiff admits the allegations of Paragraph 1 of the Third Defense of the Intervener, City of Dallas.

2

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of fact, if any, contained in Paragraph 2 of the Third Defense of Intervener, City of Dallas, but in this connection this Plaintiff denies that the lien, if any, of the City of Dallas for taxes allegedly

owed by the Defendant, Tubbs Mfg. Co., Inc., is a general lien, first, prior or superior to all other liens, under the law of the State of Texas, and/or Section 194 of Home Rule Charter of the City of Dallas or any other law or ordinance, and this Plaintiff further denies that the tax claim of the Intervener, the City of Dallas, is prior; paramount and superior to the lien of this Plaintiff, Exchange Bank & Trust Company, and this Plaintiff further denies that said claim of said City of Dallas should be paid prior to the lien and claim of this Plaintiff against the said Tubbs Mfg. Co., Inc., or said receiver.

Fourth Defense

With respect to the allegations contained in the Petition in Intervention filed herein by Briggs Weaver Machinery Company, this Plaintiff, Exchange Bank & Trust Company admits the allegations of fact contained in Paragraph 1 of said Petition in Intervention; that this Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragrphs 2, 3, 4, 5, 6; 7, 8, 9, 10 and 11 of said Petition in Intervention.

This Plaintiff admit the allegations of Paragraphs 12 and 13 of the said Petition in Intervention.

With respect to the allegations of Paragraph 14, this Plaintiff admits that it is claiming some right, title or lien agains certain property of the Tubbs Mfg. Co., Inc. but denies that the said Intervener, Briggs Weaver Machinery Company has a valid claim superior to this Plaintiff's chattel mortgage lien against the property set forth in Plaintiff's original

Petition and covered by the respective chattel mortgages described in said Petition and attached thereto as Exhibits; with respect to the allegations of Paragraph 15, this Plaintiff admits that Mr. Leonard Hoffman has been appointed receiver over all the machinery and equipment belonging to Tubbs Mfg. Co., Inc. but this Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said Paragraph 15.

This Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 16 and 17 of the said Petition in Intervention of Briggs Weaver Machinery Company.

Fifth Defense.

For further Answer herein, Plaintiff Exchange Bank & Trust Company affirmatively pleads and shows to the Court as follows:

That the first chattel mortgage upon which this Plaintiff relies, a true and correct photostatic copy of which is attached to Plaintiff's Original Petition as Exhibit I, was dated November 19, 1953, and was duly filed of record in the Chattel Mortgage Records in the Office of the County Clerk of Dallas County, Texas, on November 25, 1953, long prior to the accruing of any claim or lien asserted by any Intervener or any other party to this proceeding; that the second chattel mortgage relied upon by this Plaintiff, a true and correct copy of which is attached to Plaintiff's Original Petition as Exhibit J, is dated June 30, 1954, and the same was filed of record in the

Chattel Mortgage Records, in the office of the County Clerk of Dallas County, Texas, on the 14th day of July, 1954, long prior to the accruing of any claim or lien asserted by any Intervener or other party to this proceeding; that said chattel mortgages describe the property of the Defendant, Tubbs Mfg. Co., Inc. with specificity and were duly filed and perfected in compliance with the laws of the State of Texas and in accordance therewith the filing of said mortgages constituted due notice to all the world, and specifically to subsequent creditors, including the United States Government and the City of Dallas, of the prior existence of these liens of Plaintiffs against tne properties of the said Defendant.

Wherefore, Premises Considered, Plaintiff Exchange Bank & Trust Company, prays, as heretofore set out in its original Petition herein, for judgment against Tubbs Mfg. Company, Inc., in the principal sum of $1,436.57, together with interest thereon from October 17, 1956, at the rate of 10% per annum; for its attorneys' fees in the reasonable amount of $143.66, together with foreclosure of its chattel mortgage liens as same existed on November 19, 1953 and June 30, 1954, respectively; and that it be adjudged by the Court that Plaintiff's said chattel mortgage liens constitute prior, superior and subsisting liens as against all other liens or claims asserted or owned by any other party to this cause with respect to the items of property set forth in Plaintiff's said chattel mortgages as aforestated; and Plaintiff further prays that in the event the receiver sells said properties for cash, that a prior and superior lien be impressed on such funds so received by him from the sale of said equipment in favor of this Plaintiff; and that said

receiver be ordered to pay such funds over to this Plaintiff in such amount as is necessary to discharge this judgment and liens in favor of this Plaintiff; and Plaintiff further prays for all costs of Court and all other costs in this behalf expended and for such other and further relief to which it may be entitled.

BLAKLEY AND WALKER,
ROBERT A. WILSON,
(Robert A. Wilson),
Attorneys for Plaintiff.

1307 Pacific Avenue,
Dallas 2, Texas.

A copy of the foregoing Answer has this 27th day of December, 1956, been mailed to:

Ted P. MacMaster
Assistant City Attorney
City of Dallas
501 City Hall
Dallas, Texas

Coke & Coke
Attorneys at Law
Attn: Mr. Clinton Foshee
1400 First Natl. Bank Bldg.
Dallas, Texas

Bradford & Pritchard
Attn: Mr. W. A. Pritchard
505 N. Ervay St.
Dallas, Texas

Joe Geary
Attorney at Law
Vaughn Building
Dallas, Texas

D. M. Teague
Attorney at Law
Texas Bank Building
Dallas, Texas

Heard L. Floore
United States Attorney
Attn: Mr. John Ford
Federal Building
Dallas, Texas.

STIPULATION OF FACTS.

Filed Dec. 29, 1956.

(Title Omitted.)

It is hereby stipulated and agreed by and between the parties in the above-styled case through their respective attorneys of record that the following facts are true and correct and that the above case should be tried and determined on the issues of law raised by such facts and such other facts established by the evidence and testimony of witnesses offered in the trial of this cause by any one of the parties which do not conflict and are not inconsistent with the facts herein stipulated.

A.

The defendant, Tubbs Mfg. Co., Inc., being insolvent and unable to pay its debts as they matured because its liabilities exceeded the value of its assets, the Court, upon application, appointed a general receiver on November 23, 1956, to take charge of all of the assets of Tubbs Mfg. Co., Inc., and sell same free and clear of all liens and to deposit the proceeds of said sale in the registry of this Court. That for the purposes of the sale the receiver divided the assets into five separate lots. That the chattel mortgages of the plaintiff, Exchange Bank & Trust Company, attached to and described the assets included in Lots 1, 2, and 5 which were sold for $5,059.00; that the chattel mortgage of the intervener, First National Bank, attached to and described the property included in Lot 3 which was sold for $890.00; and that the chattel mortgage of Briggs Weaver Machinery Company attached to and described the assets included in Lot 4 which was sold for $400.00. That any liens created by virtue of the said chattel mortgages have attached to the respective proceeds received from the sale of such mortgaged properties. That after deducting the receiver's fee in the sum of $750.00 and his expenses in the sum of $505.06 from the total sale proceeds of $6,349.00, the receiver deposited the balance of $5,093.94 plus the sum of $25.00 (accepted in compromise of a claim) totaling $5,118.94 in the registry of this Court.

B.

1. That the plaintiff, Exchange Bank & Trust Company, formerly known as The Love Field State Bank,

is a State banking corporation duly organized and existing under and by virtue of the laws of the State of Texas, with its banking house at 7704 Denton Drive, Dallas, Texas.

2. That on the 19th day of November, 1953, the defendant, Tubbs Mfg. Co., Inc., was indebted and obligated to plaintiff in the sum of $3,762.00, such obligation being evidenced by a promissory note dated the 19th day of November, 1953, executed by the defendant, Tubbs Mfg. Co., Inc., to Exchange Bank & Trust Company in the principal sum of $3,762.00, with interest at the rate of ten per cent (10%) per annum from maturity until paid, and payable eighteen (18) months after date.

3. That the said obligation and indebtedness, as well as all future indebtedness, was secured by a chattel mortgage executed on November 19, 1953, by said defendant to plaintiff covering various items of machinery and equipment, specifically described in said chattel mortgage, a copy of which is attached to plaintiff's original petition as "Exhibit I."

4. Said chattel mortgage was duly filed of record on November 25, 1953, in the Chattel Mortgage Records of Dallas County, Texas, where it was filed of record as Chattel Mortgage No. 18117.

5. That from time to time various payments were made by defendant on said obligation, and said obligation was from time to time increased, renewed and or extended until on May 30, 1956, the balance of said obligation together with interest accrued thereon to said date totaled $1,806.00; that said balance was

evidenced by one certain renewal note executed by defendant to plaintiff, dated May 30, 1956, in the principal amount of $1,806.00, payable twelve (12) months after date with interest at ten per cent (10%) per annum from maturity, with ten per cent (10%) of principal and interest due thereon as an attorney's fee if collected by an attorney. Said note further provided for the deposit by defendant in a Budget Loan Deposit Account in Plaintiff Bank of the sum of $150.00 on the 16th day of July, 1956, and for a deposit of a like amount in said account on the 16th day of each successive month thereafter to and including the 16th day of June, 1957; and further provided that upon default in making any such monthly deposit the said note for the full amount thereof at the holder's option shall become immediately due and payable presentment for payment and demand being waived.

6. That defendant failed and refused to make the payment or deposit upon said obligation which became due on the 16th day of September, 1956, and failed and refused to make any payments or deposits falling due subsequent thereto, and as a result of such defaults, on October 17, 1956, plaintiff declared the balance due on said note to be matured and to be immediately due and payable, and made demand for payment thereof, which payment was refused by defendant; that defendant is entitled to credits on said obligation totaling $369.43, leaving a balance of principal and interest due and unpaid thereon of $1,436.57 on October 17, 1956; that plaintiff is also entitled to its attorneys' fees of $143.66, and to interest on $1,436.57 at the rate of ten per cent (10%) per annum from Ocober 17, 1956, until paid.

$ 2,784.00 Dallas, Texas, FEBRUARY 18, A. D. 19 55

AS HEREINAFTER STATED, for value received, I, we, or either of us, promise to pay to **BRIGGS-WEAVER MACHINERY COMPANY** or order, the sum of TWENTY SEVEN EIGHTY FOUR AND NO/00 Dollars, which includes principal in the amount of $ 2,650.48 and interest from date at the rate of six (6) per centum, per annum, payable monthly as it accrues, both principal and interest payable at Dallas, Texas.

This note is payable as follows:

$ 232.00	on or before MAR. 18, 1955	$	on or before
$ 232.00	on or before APR. 18, 1955	$	on or before
$ 232.00	on or before MAY 18, 1955	$	on or before
$ 232.00	on or before JUNE 18, 1955	$	on or before
$ 232.00	on or before JULY 18, 1955	$	on or before
$ 232.00	on or before AUG. 18, 1955	$	on or before
$ 232.00	on or before SEPT 18, 1955	$	on or before
$ 232.00	on or before OCT. 18, 1955	$	on or before
$ 232.00	on or before NOV. 18, 1955	$	on or before
$ 232.00	on or before DEC. 18, 1955	$	on or before
$ 232.00	on or before JAN. 18, 1956	$	on or before
$ 232.00	on or before FEB. 18, 1956	$	on or before

All past due principal and interest on this note shall bear interest at the rate of ten per centum per annum.

It is understood and agreed that the failure to pay this note, or any installment as above promised, or any interest hereon, when due, shall, at the election of the holder of said note, mature said note, and it shall at once become due and payable.

I, we, or either of us, the makers, sureties, endorsers, and guarantors of this note, hereby severally waive presentation for payment, notice of non-payment, protest and notice of protest and diligence of bringing suit against any party thereto, and consent that time of payment may be extended without notice thereof to any of the sureties or endorsers on this note. It is further expressly agreed that if this note is placed in the hands of an attorney for collection, or suit is brought on same, or is collected through Probate or Bankruptcy proceedings, then, and in that event, to pay the owner or holder of this note twenty per cent additional on the principal and interest then due hereon as attorney's fees.

ADDRESS 2424 Wyman St.
Dallas, Texas

TELEPHONE

TUBBS MFG. COMPANY, INC.

BY: Helen A. Tubbs Sec'y-Treas.

Form C-10 1M—8-54—Briggs-Weaver Machinery Co.

EXHIBIT "A"

$ 950.52 Dallas, Texas, APRIL 28, A. D. 19 55

AS HEREINAFTER STATED, for value received, I, we, or either of us, promise to pay to BRIGGS-WEAVER MACHINERY COMPANY or order, the sum of NINE HUNDRED FIFTY & 52/100 - - - - - Dollars, which includes principal in the amount of $ 896.79 and interest from date at the rate of six (6) per centum, per annum, payable monthly as it accrues, both principal and interest payable at Dallas, Texas.

This note is payable as follows:

$ 79.21	on or before	MAY 28, 1955	$	on or before	
$ 79.21	on or before	JUNE 28, 1955	$	on or before	
$ 79.21	on or before	JULY 28, 1955	$	on or before	
$ 79.21	on or before	AUG. 28, 1955	$	on or before	
$ 79.21	on or before	SEPT. 28, 1955	$	on or before	
$ 79.21	on or before	OCT. 28, 1955	$	on or before	
$ 79.21	on or before	NOV. 28, 1955	$	on or before	
$ 79.21	on or before	DEC. 28, 1955	$	on or before	
$ 79.21	on or before	JAN. 28, 1956	$	on or before	
$ 79.21	on or before	FEB. 28, 1956	$	on or before	
$ 79.21	on or before	MAR. 28, 1956	$	on or before	
$ 79.21	on or before	APR. 28, 1956	$	on or before	

All past due principal and interest on this note shall bear interest at the rate of ten per centum per annum.

It is understood and agreed that the failure to pay this note, or any installment as above promised, or any interest hereon, when due, shall, at the election of the holder of said note, mature said note, and it shall at once become due and payable.

I, we, or either of us, the makers, sureties, endorsers, and guarantors of this note, hereby severally waive presentation for payment, notice of non-payment, protest and notice of protest and diligence of bringing suit against any party thereto, and consent that time of payment may be extended without notice thereof to any of the sureties or endorsers on this note. It is further expressly agreed that if this note is placed in the hands of an attorney for collection, or suit is brought on same, or is collected through Probate or Bankruptcy proceedings, then, and in that event, to pay the owner or holder of this note twenty per cent additional on the principal and interest then due hereon as attorney's fees.

D5-8

ADDRESS 2424 Hyman
Dallas, Texas

TELEPHONE 389

TUBES MANUFACTURING COMPANY

Solon A. Tubbs

$ 2,502.00 Dallas, Texas, FEBRUARY 10, A. D. 19 56

AS HEREINAFTER STATED, for value received, I, we, or either of us, promise to pay to **BRIGGS-WEAVER MACHINERY COMPANY** or order, the sum of TWENTY FIVE HUNDRED TWO AND no/100 Dollars,

which includes principal in the amount of $ 2,360.51 and interest from date at the rate of six (6) per centum, per annum, payable monthly as it accrues, both principal and interest payable at Dallas, Texas.

This note is payable as follows:

$ 208.50	on or before	MAR. 15, 1956	$	on or before	
$ 208.50	on or before	APR. 15, 1956	$	on or before	
$ 208.50	on or before	MAY 15, 1956	$	on or before	
$ 208.50	on or before	JUNE 15, 1956	$	on or before	
$ 208.50	on or before	JULY 15, 1956	$	on or before	
$ 208.50	on or before	AUG. 15, 1956		on or before	
$ 208.50	on or before	SEPT 15, 1956	$	on or before	
$ 208.50	on or before	OCT. 15, 1956	$	on or before	
$ 208.50	on or before	NOV. 15, 1956	$	on or before	
$ 208.50	on or before	DEC. 15, 1956	$	on or before	
$ 208.50	on or before	JAN. 15, 1956	$	on or before	
$ 208.50	on or before	FEB. 15, 1956	$	on or before	

All past due principal and interest on this note shall bear interest at the rate of ten per centum per annum.

It is understood and agreed that the failure to pay this note, or any installment as above promised, or any interest hereon, when due, shall, at the election of the holder of said note, mature said note, and it shall at once become due and payable.

I, we, or either of us, the makers, sureties, endorsers, and guarantors of this note, hereby severally waive presentation for payment, notice of non-payment, protest and notice of protest and diligence of bringing suit against any party thereto, and consent that time of payment may be extended without notice thereof to any of the sureties or endorsers on this note. It is further expressly agreed that if this note is placed in the hands of an attorney for collection, or suit is brought on same, or is collected through Probate or Bankruptcy proceedings, then, and in that event, to pay the owner or holder of this note twenty per cent additional on the principal and interest then due hereon as attorney's fees.

ADDRESS 2424 Wyman Street
Dallas, texas

TELEPHONE

TUBBS MFG. COMPANY, INC.

BY: President

BY: Secretary

Form C-10 1M 5-54 Briggs-Weaver Machinery Co.

7. To further secure payment of defendant's obligation to plaintiff, defendant executed and delivered to plaintiff a chattel mortgage dated the 30th day of June, 1954, covering certain additional machinery and equipment located on defendant's business premises and specifically described in said chattel mortgage. A copy of said chattel mortgage is attached to plaintiff's original petition and marked "Exhibit J."

8. Said chattel mortgage dated June 30, 1954, was duly recorded by plaintiff on July 14, 1954, in the Chattel Mortgage Records of Dallas County, Texas, where it was filed of record as Chattel Mortgage No. 20784.

9. That plaintiff is and at all times has been the legal owner and holder of said obligation and the chattel mortgage liens securing same.

10. That the properties covered by the respective chattel mortgage liens hereinabove referred to are described specifically in said liens, and have been identified individually on the premises of the defendant.

11. That on the 26th day of October, 1956, plaintiff filed its suit against defendant in the 134th District Court of Dallas County, Texas, to recover judgment on defendant's obligation, as above stated, and to foreclose its chattel mortgage liens on the above referred to properties; that on the same day, and in pursuance of plaintiff's foreclosure proceedings a special receiver was appointed by the said Court at plaintiff's request, to take possession of said property, and he did take possession of the same on said day.

12. That Exhibits A through J, attached to plaintiff's original petition, may be introduced in evidence at the trial of this case for all purposes in lieu of the originals thereof.

13. That by reason of the default of the defendant, Tubbs Mfg. Co., Inc., as above described, plaintiff has been required to engage the services of Blakley and Walker, Attorneys of Dallas, Texas, and has agreed to pay said attorneys a fee of ten per cent (10%) of the principal and interest due on said obligation as provided in said note, which is a reasonable fee for such services in Dallas, Texas.

C.

1. That on February 18, 1955, Tubbs Mfg. Co., for value received, executed and delivered to Briggs Weaver Machinery Company its promissory note of such day and year and therein promised to pay said intervener or its order the sum of $2,784.00, payable $232.00 per month, beginning March 18, 1955; that said note provided that all past due principal and interest should bear interest at 10% per annum and that in the event it is placed in the hands of an attorney for collection or suit was brought on it, that the maker would pay the holder 20% additional on the principal and interest then due as attorneys' fees; that a true copy of said note is attached to Briggs Weaver Machinery Company's petition in intervention, marked "Exhibit A."

2. That Tubbs Mfg. Co. paid Briggs Weaver ten installments of $232.00 each on the note described above in paragraph 1 but has failed and refused to

3780

CONTRACT OF SALE
AND CHATTEL MORTGAGE

This Agreement, this day made by and between the Briggs-Weaver Machinery Company, a corporation, of Dallas, Texas, hereinafter called Vendor, and TUBBS MANUFACTURING COMPANY of DALLAS County of DALLAS State of TEXAS hereinafter called Purchaser, WITNESSETH:

That the Vendor hereby sells to the Purchaser, and the latter buys, the following machinery, to-wit:

1 - #7-TD, 7-1/2 HP, INGERSOLL-RAND COMPRESSOR, MOUNTED, COMPLETE, 220 VOLT, 3 PHASE, 60 CYCLE 200# PRESSURE CONSTANT SPEED CONTROL SERIAL NO.	1,042.20
1 - #CR-7006-D101B3 GENERAL ELECTRIC MAGNETIC STARTER WITH #81-D559 HEATER	51.24
1 - #CR-2960-SY103A HAND-OFF-AUTO SELECTOR SWITCH	3.35
	1,096.79
LESS CASH PAID WITH ORDER	200.00
	896.79
PLUS ADD ON INTEREST @ 6% PER YEAR FOR 12 MONTHS	53.73
	950.52

It is agreed that delivery of the above described machinery is contingent upon strikes, accidents or other delays beyond the control of the Vendor, and that acceptance of the machinery at destination shall constitute a waiver of all damages arising from delays or otherwise before delivery to the carrier.

The Purchaser agrees to pay for the aforesaid machinery, delivered as specified above, the sum of ELEVEN HUNDRED FIFTY & 52/100 - - - - - - - - - DOLLARS ($1,150.52), at the office of Briggs-Weaver Machinery Company, Dallas, Dallas County, Texas, in the following manner, that is to say:

$ 200.00 cash in hand paid, receipt of which is hereby acknowledged, and the execution by the Purchaser of one note of even date herewith, payable to Vendor, and maturing in the following amounts and on the following dates, to-wit:

$ 79.21	on or before MAY 28, 1955	$	on or before
$ 79.21	on or before JUNE 28, 1955	$	on or before
$ 79.21	on or before JULY 28, 1955	$	on or before
$ 79.21	on or before AUG. 28, 1955	$	on or before

pay the remaining two installments, the last of which was payable on or before February 18, 1956; that there is presently owing on said note the sum of $464.00, plus 10% interest since February 18, 1956, amounting to $32.87, or a total of $496.87 principal and interest; that in addition thereto, Tubbs Mfg. Co. is liable to said intervener for attorneys' fees in the amount of $99.23, making a total due on said note in the sum of $596.10.

3. That on the 28th day of April, 1955, Tubbs Mfg. Co. purchased from the plaintiff the following equipment and agreed to pay the following sums therefor:

1--#7-TD, 7-½ HP, Ingersoll-Rand Compressor, Mounted, Complete, 220 Volt, 3 Phase, 60 Cycle 200# Pressure Constant Speed Control Serial No.	$ 1,042.20
1—#CR-7006-D101B3 General Electric Magnetic Starter with #81-D559 Heater	51.24
1—#CR-2960-SY103A Hand-Off-Auto Selector Switch	3.35

4. That on April 28, 1955, Tubbs Mfg. Co. executed and delivered to Briggs Weaver Machinery Company its promissory note of even date therewith in the amount of $950.52 in consideration of Briggs Weaver Machinery Company selling it the equipment described above in paragraph 3 and agreed to pay said note in monthly installments of $79.21 beginning May 28, 1955; that a true copy of said note is attached to Briggs Weaver Machinery Company's petition in intervention, marked "Exhibit B."

5. That on the 28th day of April, 1955, Tubbs Mfg. Co. executed and delivered to Briggs Weaver Machinery Company its contract of sale and chattel mortgage whereby it agreed that the title to the property described above in paragraph 3 should remain in said intervener until the note described above in paragraph 4 had been fully paid and said Tubbs Mfg. Co. further agreed that said mortgage agreement was to secure said note and any renewals and any other indebtedness for which it was or should become liable to Briggs Weaver Machinery Company; that on May 3, 1955, which was prior to the delivery of said equipment to Tubbs Mfg. Co., Briggs Weaver Machinery Company recorded said contract of sale and chattel mortgage in the Chattel Mortgage Records of Dallas County, Texas, and same appears of record in Volume 5, Page 158, of said Chattel Mortgage Records; that a certified copy of said contract of sale and chattel mortgage as it appears on record in the Chattel Mortgage Records of Dallas County, Texas, is attached hereto, marked "Exhibit A" and made a part hereof. That said contract of sale and chattel mortgage has never been released by Briggs Weaver Machinery Co.

6. That on February 10, 1956, Tubbs Mfg. Co., for value received, executed and delivered to Briggs Weaver Machinery Company its promissory note in the sum of $2,502.00, which included principal in the amount of $2,360.51 and 6% interest for one year, payable in monthly installments of $208.50, beginning the 15th day of March, 1956; that said note provided that upon default in making any such monthly installments, at the holder's option, same should mature and become due and payable at once and provided

for waiver of presentment for payment and demand; that Tubbs Mfg. Co. has failed and refused to pay any of said monthly installments and on November 1, 1956, Briggs Weaver Machinery Company declared the full amount of said note to be matured and immediately due and payable; that said note further provided that the maker would pay 10% interest on all past due principal and interest and in the event it is placed in the hands of an attorney for collection, it would pay the holder thereof 20% additional on the principal and interest then due as attorneys' fees; that a true copy of said note is attached to Briggs Weaver Machinery Company's petition in intervention, marked "Exhibit D."

7. That there is now owing on said note the principal sum of $2,360.51, plus interest of $106.20, or a total of $2,466.71, principal and interest; that in addition thereto, Tubbs Mfg. Co. is liable to Briggs Weaver Machinery Company for attorneys' fees in the amount of $493.34, making a total owing by Tubbs Mfg. Co. on said note of $2,960.05.

8. That Exhibits "A" through "D" attached to Briggs Weaver Machinery Company's petition in intervention may be introduced in evidence at the trial of this cause for all purposes in lieu of the originals thereof.

D.

1. That on November 2, 1955, Tubbs Mfg. Co., Inc., purchased a new 1956 Ford 3/4 ton pick up automobile engine no. F25V6D 13204, from Curtis Parker Motors, Inc., at Carrollton, Texas. Tubbs Mfg. Co.,

Inc., on the date of such purchase, executed a conditional sale contract covering such truck, which contract embodied the terms of a promissory note whereby Tubbs Mfg. Co., Inc., agreed to pay the balance of the purchase price in the amount of $1,651.92 to Curtis Parker Motors, Inc., in 24 consecutive monthly installments of $68.83 each, beginning on December 2, 1955. On November 3, 1955, Curtis Parker Motors, Inc., sold, transferred and assigned this note and conditional sale contract to First National Bank in Dallas and said Bank thus paid the balance of the purchase price of said truck to Curtis Parker Motors, Inc., on behalf of Tubbs Mfg. Co., Inc. Thereafter, Tubbs Mfg. Co., Inc., paid the monthly payments as provided for in said note and contract to First National Bank in Dallas beginning on December 2, 1955, up to and including September 2, 1956. Tubbs Mfg. Co., Inc., has defaulted on the remaining monthly installments and at this time there is an unpaid balance due and payable on such note and contract in the amount of $963.62.

2. That the title to such truck was transferred to Tubbs Mfg. Co., Inc., and the original certificate of such title was issued by the Motor Vehicle Division of the Texas Highway Department on November 17, 1955, which certificate reflects a first lien in favor of First National Bank in Dallas to secure the amount of $1,651.92, which amount was the balance of the purchase price owed by Tubbs Mfg. Co., Inc., on the above described truck.

3. That the true and correct copy of the conditional sales contract and of the original certificate of title attached to First National Bank in Dallas' com-

plaint in intervention as Exhibits "A" and "B", respectively, may be introduced in evidence at the trial of this cause for all purposes in lieu of the originals thereof.

E.

1. That intervener, City of Dallas, for itself and on behalf of the Dallas Independent School District, is a municipal corporation, duly and legally incorporated under and by virtue of a Special Act of the Legislature of the State of Texas, which special act together with the amendments thereto constitute the Home Rule Charer of intervener.

2. Sections 181, 184, 194, 195 and 196 of the Charter of the City of Dallas read in whole or in part as follows:

"Section 181. All property, real, personal or mixed, lying and being within the corporate limits of the City of Dallas on the 1st day of January, shall be subject to taxation, excepting such property as may be exempt from taxation under the Constitution, and the laws of the State of Texas. It shall be the duty of the Assessor and Collector of Taxes, between the first day of January and the first day of July of each year, to make and return to the Governing Body of the City a full and complete list and assessment of all property, both real and personal, held, owned or situated in said City on the first day of January of each year and not exempt from municipal taxation,—and also a list of all banks, and other corporations whose capital stock is liable to taxation, with the cash value of the shares of stock of each such bank or other corporation and the names of the owners thereof.

"Sec. 184. The Assessor and Collector of Taxes shall, at least ten days before the first day of January of each year, give public notice by advertisement in the official newspaper that all persons owning or controlling, as agent or otherwise, any personal property or real estate subject to municipal taxation, are required to render same for taxation on or before the first day of April of each year.

"Sec. 194. A lien is hereby created on all property, personal and real, in favor of the City of Dallas, for all taxes, ad valorem, occupation or otherwise. Said lien shall exist from January 1st in each year until the taxes are paid. Such lien shall be prior to all other claims, and no gift, sale, assignment or transfer of any kind, or judicial writ of any kind, can ever defeat such lien, but the Assessor and Collector of Taxes can pursue such property, and whenever found out, may seize and sell enough thereof to satisfy such taxes.

"All persons or corporation owning or holding personal property or real estate in the City of Dallas on the first day of January of each year shall be liable for all municipal taxes levied thereon for such year."

"Sec. 195. If anyone against whom a personal tax is assessed, and which is due and unpaid, whether the same be delinquent or not, shall have removed out of the City, or shall be about to remove out of the City, or shall have removed or about to remove his personal property out of the City, it shall be the duty of the Assessor and Collector of Taxes to proceed at once and collect such taxes by seizure and sale of any personal property of such person to be

found in the City of Dallas, or anywhere in the State of Texas.

"Sec. 196. All axes shall be payable at the office of the Assessor and Collector of Taxes in the City of Dallas."

3. That for the taxable year 1955 the Tubbs Mfg Co., Inc., acting by and through S. A. Tubbs, its secretary and treasruer, furnished as required by law to the Assessor and Collector of taxes of the City of Dallas its signed, sworn rendition of personal property dated March 21, 1955, which it owned as of January 1, 1955, subject to ad volorem taxation by your intervener and said rendition was accepted by the City Assessor and Collector of Taxes of the City of Dallas.

4. That for the year 1956 the Tubbs Mfg. Co , Inc., acting by and through its duly authorized agent and officer, W. O. Tubbs, furnished as required by law to the Assessor and Collector of Taxes of the City of Dallas its signed, sworn rendition of personal property dated March 15, 1956, which it owned as of January 1, 1956, subject to ad valorem taxation by your intervener and said rendition was accepted by the City Assessor and Collector of Taxes of the City of Dallas.

5. That said personal property consisted of goods, wares and merchandise, machinery and other equipment consisting of engines, motors, shop tools, etc., and in addition to the above personal property the defendant owned in each of said taxable years subject to taxation the following trucks: one 1953 Ford

Truck for the year 1955 and one 1956 3/4 Ton Ford Pickup Truck for the year 1956, all of which property the Receiver took into possession under orders of the Court.

6 That after the Tubbs Mfg. Co., Inc., rendered its personal property for taxation the Tax Assessor and Collector of the City of Dallas prepared a tax roll which was presented to the City Council of the City of Dallas for its approval and the City Council of the City of Dallas approved the tax roll and levied and assessed ad valorem taxes against the Tubbs Mfg. Co., Inc., for the year 1955 in the amount of $62.63 on September 12, 1955, by Ordinance No. 6628.

7. That after the Tubbs Mfg. Co., Inc., rendered its personal property for taxation the Tax Assessor and Collector of the City of Dallas prepared a tax roll which was presented to the City Council of the City of Dallas for its approval and the City Council of the City of Dallas approved the tax roll and levied and assessed ad valorem taxes against the Tubbs Mfg. Co., Inc., for the year 1956 in the amount of $72.56, on September 4, 1956, by Ordinance No. 7051.

8. Section 209 of the City Charter of the City of Dallas provides that the ad valorem taxes of the City of Dallas authorized to be levied shall become due and payable in two equal installments and that the first installment in the amount of fifty per cent of the total sum of the taxes due and payable for the current year shall be due and payable on the first day of September of each year, and the second installment which amount shall be the remaining fifty

It is agreed that delivery of the above described machinery is contingent upon strikes, accidents or other delays beyond the control of the Vendor, and that acceptance of the machinery at destination shall constitute a waiver of all damages arising from delays or otherwise before delivery to the carrier.

The Purchaser agrees to pay for the aforesaid machinery, delivered as specified above, the sum of ELEVEN HUNDRED FIFTY & 52/100 - - - - - - - - - DOLLARS ($1,150.52), at the office of Briggs-Weaver Machinery Company, Dallas, Dallas County, Texas, in the following manner, that is to say:

$ 200.00 cash in hand paid, receipt of which is hereby acknowledged, and the execution by the Purchaser of one note of even date herewith, payable to Vendor, and maturing in the following amounts and on the following dates, to-wit:

$	79.21	on or before MAY 28, 1955	$		on or before
$	79.21	on or before JUNE 28, 1955	$		on or before
$	79.21	on or before JULY 28, 1955	$		on or before
$	79.21	on or before AUG. 28, 1955	$		on or before
$	79.21	on or before SEPT. 28, 1955	$		on or before
$	79.21	on or before OCT. 28, 1955	$		on or before
$	79.21	on or before NOV. 28, 1955	$		on or before
$	79.21	on or before DEC. 28, 1955	$		on or before
$	79.21	on or before JAN. 28, 1956	$		on or before
$	79.21	on or before FEB. 28, 1956	$		on or before
$	79.21	on or before MAR. 28, 1956	$		on or before
$	79.21	on or before APR. 28, 1956	$		on or before

Said machinery, when delivered, is to be situated on the following described real estate, owned or occupied by the Purchaser, to-wit: Situated in DALLAS County, State of TEXAS and described as:

2424 WYMAN STREET, DALLAS, TEXAS

It is agreed that title to all of said property shall remain in Vendor until the same has been paid for in full and that the mortgage agreement herein is to secure the above described note and any renewals of same, or any part thereof, with interest thereon, together with any sum or sums advanced or that may during the life of this mortgage be advanced, or paid to, or for the account of the said Purchaser, or expended in repairing or improving said mortgaged property, and also any other indebtedness for which the Purchaser may be or become liable to the Vendor herein, either as principal, endorser, surety or guarantor; and shall punctually and faithfully perform each, all, and every of the covenants, stipulations and agreements herein contained on his part to be performed, then this instrument shall be void, otherwise to remain in full force and effect.

Said Purchaser further promises that he will use said goods and chattels with reasonable care, skill and caution, and keep same in good repair and under shelter, and WILL NOT USE OR PERMIT THEM TO BE USED FOR HIRE, and will not permit the same to be damaged, injured or depreciated, and will not attempt to sell, assign or dispose of said goods and chattels or any interest therein or remove, or permit the same to be removed from the county where he resides, without the written consent of said Vendor, and will not encumber or permit any encumbrances or lien of any character, whatsoever against the same; and that he will pay all taxes that may be levied against said goods and chattels.

Said Purchaser further covenants and agrees to keep said goods and chattels insured against loss or damage by fire and theft; loss, if any, payable to said Vendor as said Vendor's interest may appear.

And in case said Purchaser shall neglect or refuse to obtain said insurance or pay such taxes as aforesaid, then said Vendor may at said Vendor's option obtain such insurance and pay all such taxes and assessments aforesaid; and all sums of money thus expended are hereby secured by these presents, and shall be repayable with interest upon demand from said Purchaser to said Vendor, and may be retained by said Vendor from the proceeds of the sale of said goods and chattels herein authorized.

In case of default be made in the payment of said debt, or interest, or any of the said notes, or any extension or renewal thereof or if any execution, attachments, sequestration or other writ shall be levied on said goods and chattels, or if a petition for receiver or in bankruptcy shall be filed by or against said Purchaser, or if said Purchaser shall make an assignment for the benefit of his creditors, or if said Purchaser shall fail to keep and perform any of the covenants, stipulations and agreements herein contained on his part to be performed, or if said Vendor shall at any time deem said Purchaser, said chattels, said debt or said security unsafe or insecure, then upon the happening of said contingencies or any of them, the whole amount herein secured remaining unpaid, is by said Purchaser admitted to be due and payable, and said Vendor may at said Vendor's option (notice of which option is hereby expressly waived), foreclose this mortgage by action or otherwise, and said Vendor is hereby authorized to enter upon the premises where said goods and chattels may be, and remove and sell the same and all equity of redemption of the Purchaser therein, either at public auction or private sale at ..... Texas, or elsewhere, with out demand for performance, and without liability for damages, and out of the proceeds of said sale pay the costs of foreclosing this mortgage, and the expense of pursuing, taking, keeping, advertising and selling said goods and chattels, including a reasonable attorney's fee, and apply the residue thereof towards the payment of said indebtedness or any part thereof, in such manner as said Vendor may elect, rendering the surplus, if any, unto said Purchaser, his executors, administrators and assigns upon demand.

And said Vendor may purchase at such sale in the same manner, and to have the same effect as any person not interested herein.

This mortgage shall apply to and bind said Purchaser, his personal representatives and assigns, and inure to the benefits of said Vendor, said Vendor's personal representatives, successors and assigns.

WITNESS the signatures of the parties hereto, this the 28th day of APRIL, 1955

L. T. Wyrick

TUBBS MANUFACTURING COMPANY

per cent of the total sum due and payable in taxes for the current year shall become due and payable on the first day of March of the ensuing year.

Although the taxes due the City of Dallas are due and payable on September 1 of each calendar year because of the vast amount of work necessary to prepare the tax rolls, the tax rolls are ordinarily completed about September 15 of each year and presented to the City Council of the City of Dallas for its approval and the levy and assessment.

9. That the total amount of the taxes involved herein owing to the said City of Dallas by the Tubbs Mfg. Co., Inc., amounts to the sum of $135.19 which said sum is now due and unpaid, amounting to the sum of $62.63 for the year 1955 and the sum of $72.56 for the year 1956, totaling the sum of $135.19.

10. That the renditions made by the Tubbs Mfg. Co., Inc., and the assessments thereon together with all the other assessments for the years 1955 and 1956 were reviewed and approved by the Board of Equalization of the City of Dallas as provided by Section 190 of the Charter of the City of Dallas.

11. That any levy and assessment of said taxes and all things required to be done by the proper officials of the City of Dallas have been duly and legally performed and none of the parties herein question the regularity and validity of the procedure of assessment and levy of the taxes made by the City of Dallas.

12. That under the provisions of Section 194 of the Charter of the City of Dallas the defendant, City of Dallas, has a general lien upon all the property involved herein for the 1955 and 1956 taxes owing by the Tubbs Mfg. Co., Inc., to the said City of Dallas.

13. Certified copies of the Tax Roll of the City of Dallas for the years 1955 and 1956 are attached to the answer of the City of Dallas to the petition in intervention as Exhibits "A" and "B" and may be introduced in evidence at the trial of this cause for all purposes; also any applicable provisions of the Charter of the City of Dallas may be received in evidence.

F.

That excise taxes in the amount of $2,726.16, together with penalty in the amount of $2,170.96, and interest in the amount of $606.83, (totaling $5,503.95), for the period November 1, 1951, through and including June 30, 1953, and withholding taxes in the amount of $3,307.63, together with interest in the amount of $8.14, (totaling $3,315.77), for the second quarter of 1956, were duly and legally assessed against Tubbs Mfg. Co., Inc., by the District Director of Internal Revenue for the Dallas District of Texas. The assessment list for said taxes was signed and certified by the District Director of Internal Revenue for the Dallas District of Texas on August 15, 1956. That on August 15, 1956, notice of said assessments and demand for the payment of said debt for taxes in the total sum of $8,819.72 was given the said Tubbs Mfg. Co., Inc. That the said Tubbs Mfg. Co., Inc., has failed and refused to pay all or any part of said

taxes and interest due thereon as provided by law from the date of said notice and demand. That notice of the tax lien to secure the payment of said taxes was duly filed by the District Director of Internal Revenue in the office of the County Clerk of Dallas County, Texas, on the 15th day of October, 1956, being duly recorded in Volume 24, Page 368, of the Federal Tax Lien Records of Dallas County, Texas.

Approved and Agreed To:
BLAKLEY AND WALKER,
By ROBERT A. WILSON,
Attorneys for Exchange Bank and Trust Co.
TED P. MacMASTER,
Assistant City Attorney,
Attorney for City of Dallas.
COKE AND COKE,
By CLINTON FOSHEE,
Attorneys for First National Bank.
BRADFORD AND PRITCHARD,
By W. A. PRITCHARD,
Attorneys for Briggs Weaver Machinery Co.
D. M. TEAGUE,
Attorney for Tubbs Mfg. Co., Inc.
JOHN C. FORD,
Assistant United States Attorney,
Attorney for United States of America.

Note

Page 85 is the
long exhibit at right edge
of this card.

The State of Texas,
County of Dallas.

I, Ed H. Steger, County Clerk in and for said County and state, do hereby certify that the above and foregoing is a true and correct copy of 3780 Chattel Mtg. Tubbs Mfg. Co., to Briggs Weaver Mch. Co. as the same appears on file and/or of record in my office in Vol. 5 Page 158 of Chattel Mortgage Records of Dallas County, Texas.

Witness my hand and seal of office Dallas, Texas, this 20th day of Dec. 1956.

ED H. STEGER,
County Clerk, Dallas County, Texas,
By RAY E. RIGGS,
Deputy.

(Seal)

OPINION OF THE COURT.

Filed Dec. 29, 1956.

(Title Omitted.)

Appearances:

Blakley & Walker, Dallas, Texas, By Mr. Robert A. Wilson, For the Plaintiff;

Mr. D. M. Teague, Dallas, Texas, Representing Tubbs Mfg. Co., Inc., and

Mr. John Ford, Assistant United States District Attorney, Dallas, Texas, Representing The United States of America, For the Defendants;

Bradford & Pritchard, Dallas, Texas, By Mr. William A. Pritchard, Representing Briggs-Weaver Machinery Co., Dallas, Texas;

Mr. Ted T. MacMaster, Dallas, Texas, Representing The City of Dallas, Texas;

Coke & Coke, Dallas, Texas, By Mr. Clinton Foshee, Representing The First National Bank of Dallas, Dallas, Texas;

Mr. Joe Geary, Dallas, Texas, Representing Charles L. Brown and Glenn W. Day; For the Interveners.

Number 6861 originated in the State Court and was brought to this Court on a notice of removal on November 28, 1956. The docket in the case indicates that

$ 79.21	on or before	DEC. 28, 1955	$		on or before
$ 79.21	on or before	JAN. 28, 1956	$		on or before
$ 79.21	on or before	FEB. 28, 1956	$		on or before
$ 79.21	on or before	MAR 28, 1956	$		on or before
$ 79.21	on or before	APR. 28, 1956	$		on or before

Said machinery, when delivered, is to be situated on the following described real estate, owned or occupied by the Purchaser, to-wit: Situated in DALLAS County, State of TEXAS and described as: 2424 WYMAN STREET, DALLAS, TEXAS

It is agreed that title to all of said property shall remain in Vendor until the same has been paid for in full and that the mortgage agreement herein is to secure the above described note and any renewals of same, or any part thereof, with interest thereon, together with any sum or sums advanced or that may during the life of this mortgage be advanced, or paid to, or for the account of the said Purchaser, or expended in repairing or improving said mortgaged property, and also any other indebtedness for which the Purchaser may be or become liable to the Vendor herein, either as principal, endorser, surety or guarantor; and shall punctually and faithfully perform each, all, and every of the covenants, stipulations and agreements herein contained on his part to be performed, then this instrument shall be void, otherwise to remain in full force and effect.

Said Purchaser further promises that he will use said goods and chattels with reasonable care, skill and caution, and keep same in good repair and under shelter, and WILL NOT USE OR PERMIT THEM TO BE USED FOR HIRE, and will not permit the same to be damaged, injured or depreciated, and will not attempt to sell, assign or dispose of said goods and chattels or any interest therein or remove, or permit the same to be removed from the county where he resides, without the written consent of said Vendor, and will not encumber or permit any encumbrances or lien of any character, whatsoever against the same; and that he will pay all taxes that may be levied against said goods and chattels.

Said Purchaser further covenants and agrees to keep said goods and chattels insured against loss or damage by fire and theft; loss, if any, payable to said Vendor as said Vendor's interest may appear.

And in case said Purchaser shall neglect or refuse to obtain said insurance or pay such taxes as aforesaid, then said Vendor may at said Vendor's option obtain such insurance and pay all such taxes and assessments aforesaid; and all sums of money thus expended are hereby secured by these presents, and shall be repayable with interest upon demand from said Purchaser to said Vendor, and may be retained by said Vendor from the proceeds of the sale of said goods and chattels herein authorized.

In case of default be made in the payment of said debt, or interest, or any of the said notes, or any extension or renewal thereof or if any execution, attachments, sequestration or other writ shall be levied on said goods and chattels, or if a petition for receiver or in bankruptcy shall be filed by or against said Purchaser, or if said Purchaser shall make an assignment for the benefit of his creditors, or if said Purchaser shall fail to keep and perform any of the covenants, stipulations and agreements herein contained on his part to be performed, or if said Vendor shall at any time deem said Purchaser, said chattels, said debt or said security unsafe or insecure, then upon the happening of said contingencies or any of them, the whole amount herein secured remaining unpaid, is by said Purchaser admitted to be due and payable, and said Vendor may at said Vendor's option (notice of which option is hereby expressly waived), foreclose this mortgage by action or otherwise, and said Vendor is hereby authorized to enter upon the premises where said goods and chattels may be, and remove and sell the same and all equity of redemption of the Purchaser therein, either at public auction or private sale at ..... Texas, or elsewhere, with out demand for performance, and without liability for damages, and out of the proceeds of said sale pay the costs of foreclosing this mortgage, and the expense of pursuing, taking, keeping, advertising and selling said goods and chattels, including a reasonable attorney's fee, and apply the residue thereof towards the payment of said indebtedness or any part thereof, in such manner as said Vendor may elect, rendering the surplus, if any, unto said Purchaser, his executors, administrators and assigns upon demand.

And said Vendor may purchase at such sale in the same manner, and to have the same effect as any person not interested herein.

This mortgage shall apply to and bind said Purchaser, his personal representatives and assigns, and inure to the benefits of said Vendor, said Vendor's personal representatives, successors and assigns.

WITNESS the signatures of the parties hereto, this the 28th day of APRIL, 1955

J. T. Wyrick

P B Leatherwood

Witnesses to signature of Purchaser

TUBBS MANUFACTURING COMPANY

By Solon A. Tubbs

Purchaser

389

BRIGGS-WEAVER MACHINERY COMPANY

By

Vendor

This contract is subject to acceptance and approval of Briggs-Weaver Machinery Company, at its office in Dallas, Texas.

FORM C-2 10-6-54

Lien Release

the case there was for judgment and foreclosure of certain liens, etcetera against an insolvent debtor, to-wit: The Tubbs Manufacturing Company. After it had been filed there and removed and filed here, there were a number of interventions filed: First National Bank, in the City of Dallas, and Briggs-Weaver Company, and others indicated here and argued upon this particular occasion.

The amount of money that has been deposited here is not sufficient to satisfy the claims of all of the claimants and it is the desire of the Government to be paid out of this money in full for its excise and tax claims.

The facts have been stipulated by the parties and I think they have been accurately stipulated, and I find the facts to be as stipulated.

I also want to make recognition, as the Judge, of the very fine briefs filed here by the City of Dallas and by the United States, which briefs, as I understand it, have been furnished to the opposing parties. I also wish to recognize the fine work of the receiver, Mr. Hoffman, who is an attorney of this city and practitioner in this Court, who has sold this property and has had his sale confirmed and his expense account paid out of the funds and also his fee as a receiver. So at this moment we are all reaching after this money, or part of it.

I believe, gentlemen, that as citizens of the United States, as well as citizens of the State, and as citizens of the City or communities in which we reside, we must both, as lawyers and Judges, give effect to the predominating legislation and law of the national government, and that it is not the intention of any disloyalty to any state or city or any community; and I believe that the action of the Congress bears

that in mind, or rather supports that thought, in passing what is known as Section 3466, which gives the national government the superlative, or, overriding lien in this particular matter. And I, therefore, hold as a conclusion of law that judgment must go for the United States.

The judgment will indicate and show what overplus there is after the payment of its claim so that that might be divided, if there is any left, among the other claimants in accordance to the priorities.

(S.) WM. H. ATWELL,
United States District Judge.

JUDGMENT.

Filed January 31, 1957.

In the United States District Court for the Northern District of Texas, Dallas Division.

Exchange Bank & Trust Company, et al.,
vs. Civil Action No. 6861.
Tubbs Mfg. Co., Inc., et al.

On this the 29th day of January, 1957, came on for trial the above numbered and entitled cause of action; and came all of the parties except defendant Charles L. Brown, and defendant, Glenn W. Day, who although duly served with process did not appear to defend or assert any claim herein but wholly made default. The Court, having considered the pleadings, the evidence and the argument of counsel and having

found the facts to be as stipulated by the parties and being fully advised in the premises, is of the opinion that the United States of America is entitled to judgment for its taxes in the amount of $8,819.72, together with interest as provided by law, against the defendant, Tubbs Mfg. Co., Inc., and that the United States of America, under the provisions of Section 3466 of the Revised Statutes, Section 191 of Title 31, U.S.C.A., has an absolute priority to have its claim for taxes first satisfied out of the funds on deposit in this Court in the sum of $5,118.94 realized from the sale of the assets of the insolvent debtor, Tubbs Mfg. Co., Inc.; that plaintiff, Exchange Bank & Trust Company, is entitled to judgment against the defendant, Tubbs Mfg. Co., Inc., in the sum of $1,436.57 with interest thereon from October 17, 1956, until paid at the rate of 10 per cent per annum, together with attorneys' fees in the amount of $143.66; that the intervener, First National Bank, is entitled to judgment against the defendant, Tubbs Mfg. Co., Inc., in the sum of $863.62 with interest thereon from October 2, 1955, until paid at the rate of 10 per cent per annum; that the intervener, Briggs Weaver Machinery Company, is entitled to judgment against the defendant, Tubbs Mfg. Co., Inc., in the sum of $2,360.51 with interest thereon from March 15, 1956, until paid at the rate of 10 per cent per annum, together with attorneys' fees in the amount of $493.34; that the City of Dallas is entitled to judgment for its personal property taxes against the defendant, Tubbs Mfg. Co., Inc., in the sum of $135.19, together with penalty and interest thereon as provided by law; that the liens of the Exchange Bank & Trust Company, the First National Bank, Briggs Weaver Machinery Company, and the City of Dallas, as described in the stipulation of

facts, are inferior and subordinate to the priority claim of the United States for its taxes;

It is, therefore, Ordered, Adjudged and Decreed:

1. That the United States of America do have and recover of and from the defendant, Tubbs Mfg. Co., Inc., judgment for its taxes in the sum of $8,819.72, together with interest as provided by law; that the United States of America has a prior and superior claim for its taxes on the funds on deposit in this Court in this case in the amount of $5,118.94 realized from the sale of the assets of the insolvent debtor, Tubbs Mfg. Co., Inc., and the Clerk of this Court is hereby ordered and directed to issue his check in said sum of $5,118.94 payable to the United States of America;

2. That the plaintiff, Exchange Bank & Trust Company, do have and recover of and from the defendant, Tubbs Mfg. Co., Inc., judgment in the sum of $1,436.57 with interest thereon from October 17, 1956, until paid at the rate of 10 per cent per annum, together with attorneys' fees in the amount of $143.66;

3. That the intervener, First National Bank, do have and recover of and from the defendant, Tubbs Mfg. Co., Inc., judgment in the sum of $863.62 with interest thereon from October 2, 1955, until paid at the rate of 10 per cent per annum;

4. That the intervener, Briggs Weaver Machinery Company, do have and recover of and from the defendant, Tubbs Mfg. Co., Inc., judgment in the sum of $2,360.51 with interest thereon from March 15, 1956,

until paid at the rate of 10 per cent per annum, together with attorneys' fees in the amount of $493.34;

5. That the intervener, City of Dallas, do have and recover of and from the defendant, Tubbs Mfg. Co., Inc., judgment for its personal property taxes in the sum of $135.19, together with penalty and interest thereon as provided by law.

To all of which action of the Court, plaintiff, Exchange Bank & Trust Company; intervener, First National Bank; intervener, Briggs Weaver Machinery Company; and intervener, City of Dallas, except.

Dated at Dallas, Texas, this the 31 day of January, 1957.

WM. H. ATWELL,
United States District Judge

Approved as to Form:
BLAKLEY AND WALKER,
By ROBERT A. WILSON,
(Robert A. Wilson),
Attorneys for Exchange Bank & Trust Co.
TED P. MacMASTER,
(Ted P. MacMaster),
Assistant City Attorney,
Attorney for City of Dallas.
COKE AND COKE,
By CLINTON FOSHEE,
(Clinton Foshee),
Attorneys for First National Bank.
BRADFORD AND PRITCHARD,
By W. A. PRITCHARD,
(W. A. Pritchard),
Attorneys for Briggs Weaver Machinery Co.

D. M. TEAGUE,
(D. M. Teague),
Attorney for Tubbs Mfg. Co., Inc.
JOHN C. FORD,
(John C. Ford),
Assistant United States Attorney,
Attorney for United States of America.

NOTICE OF APPEAL

Filed Feb. 8, 1957.

In the United States District Court for the Northern District of Texas, Dallas Division.

Exchange Bank & Trust Company, Briggs Weaver Machinery Co., First National Bank in Dallas, and City of Dallas, Texas, Plaintiff,

vs. Civil Action No. 6861.

Tubbs Mfg. Co., Inc., and The United States of America, Defendants.

Notice is hereby given that the above named Exchange Bank & Trust Company, Plaintiff, and Briggs Weaver Machinery Co., First National Bank in Dallas, and the City of Dallas, Texas, a municipal corporation, Interveners, hereby appeal to the United States Court of Appeals for the Fifth Circuit from that portion of the final judgment entered in this action on the 31st day of January, 1957, which holds that The United States of America, under the provisions of Section 3466 of the Revised Statutes, Section 191 of Title 31, U.S.C.A., has absolute priority to have its

claim for taxes first satisfied out of the sum of $5,118.94 on deposit in this Court, and that the respective liens of the Exchange Bank & Trust Company, the First National Bank in Dallas, Briggs Weaver Machinery Co., and the City of Dallas, Texas, are inferior and subordinate to said priority claim of The United States of America.

Dated February 7th, 1957.

BLAKLEY & WALKER,
By ROBERT A. WILSON,
(Robert A. Wilson),
Attorneys for Exchange
Bank & Trust Company.

1307 Pacific Avenue,
Dallas, Texas.

BRADFORD & PRITCHARD,
By W. A. PRITCHARD,
(W. A. Pritchard),

505 N. Ervay Sreet,
Dallas, Texas.

COKE & COKE,
By CLINTON FOSHEE,
(Clinton Foshee),
Attorneys for First National
Bank in Dallas.

First National Bank Building,
Dallas, Texas.

CITY OF DALLAS, TEXAS,
By TED P. MacMASTER,
(Ted P. MacMaster),
Assistant City Attorney,
City of Dallas, Texas.

City Hall,
Dallas, Texas.

STIPULATION AS TO CONTENTS OF RECORD ON APPEAL.

Filed March 4, 1957.

(Title Omitted.)

Pursuant to Rule 75(f) of the Federal Rules of Civil Procedure it is hereby stipulated by and between the attorneys for the parties in this action that the following shall constitute the transcript of record on appeal herein from the above named Court to the Court of Appeals for the Fifth Circuit in the above entitled cause:

1. Original Petition of Exchange Bank & Trust Company against Tubbs Mfg. Co., Inc., filed October 16, 1956, in the 134th District Court of Dallas County, Texas.

2. Order Appointing Receiver, issued October 26, 1956, by 134th District Court of Dallas County, Texas.

3. Petition in Intervention of Briggs Weaver Machinery Company filed in 134th District Court of Dallas County, Texas, on November 5, 1956, and Exhibits A, B and D attached thereto.

4. Petition for Removal to United States District Court for the Northern District of Texas, Dallas Division, without attached exhibits.

5. Notice of Filing Removal Petition.

6. Answer to Petition in Intervention, filed herein by the United States of America.

7. Complaint in Intervention of First National Bank in Dallas.

7(a). Order of the 134th District Court of Dallas County, Texas, dated 11-23-56 appointing a General Receiver.

7(b). Answer of Defendant Tubbs Mfg. Co. Inc.

7(c). Order dated 12-14-56 of U.S. District Court appointing General Receiver.

8. Answer to Petition in Intervention, filed by City of Dallas.

9. Plaintiff Exchange Bank & Trust Company's Answer to Petitions in Intervention.

10. Stipulation of facts, and Exhibit A attached thereto.

11. Opinion of the District Court.

12. Judgment.

13. Notice of Appeal, with date of filing.

14. This designation,

15. Stipulation and order for transfer of exhibits.

16. Statement of points upon which Appellants, Exchange Bank and Trust Company, Briggs Weaver Machinery Company, and First National Bank in Dallas, intend to rely on appeal.

17. Statement of points upon which Appellant City of Dallas, Texas, intends to rely on appeal.

Dated March 4th, 1957.

BLAKLEY AND WALKER,
By ROBERT A. WILSON,
Attorneys for Appellant, Exchange Bank & Trust Company.

BRADFORD & PRITCHARD,
By W. A. PRITCHARD,
(W. A. Pritchard),
Attorneys for Appellant, Briggs Weaver Machinery Co.

COKE & COKE,
By CLINTON FOSHEE,
(Clinton Foshee),
Attorneys for Appellant, First National Bank in Dallas.

TED P. MacMASTER,
(Ted P. MacMaster),
Assistant City Attorney,
Attorney for Appellant, City of Dallas, Texas.

City Hall,
Dallas, Texas.

JOHN C. FORD,
(John C. Ford),
Assistant United States Attorney, Attorrey for Appellee, United States of America.

STIPULATION FOR TRANSFER OF EXHIBITS.

Filed March 5, 1957.

(Title Omitted.)

It is Stipulated among the parties herein that Exhibits A and I of Exchange Bank and Trust Company, Plaintiff, Exhibits A and B of First National Bank in Dallas, Intervener, and Exhibits 1 and 2 of the City of Dallas, Intervener, introduced in evidence on the trial of this cause, may be transmitted to the Court of Appeals in lieu of the reproductions of said Exhibits as a part of the printed record on appeal.

Said Exhibits shall be transmitted by the Clerk of this Court to the Court of Appeals for the Fifth Circuit with the record on appeal in this cause, and when the appeal in this cause has been heard and determined, said Exhibits shall be returned to the Clerk of this Court by the Clerk of the Court of Appeals for the Fifth Circuit.

Dated: March 4th, 1957.

BLAKLEY AND WALKER,
By ROBERT A. WILSON,
(Robert A. Wilson),
Attorneys for Exchange
Bank and Trust Company.
TED P. MacMASTER,
(Ted P. MacMaster),
Assistant City Attorney, Attorney for City of Dallas.

COKE & COKE,
By CLINTON FOSHEE,
(Clinton Foshee),
Attorneys for First National Bank in Dallas.
BRADFORD AND PRITCHARD
By W. A. PRITCHARD,
(W. A. Pritchard),
Attorneys for Briggs Weaver Machinery Company.
JOHN C. FORD,
(John C. Ford),
Assistant United States Attorney, Attorney for United States of America.

Order.

It is Ordered, in accordance with the above Stipulation of the above named parties, that the Clerk of this Court be and he is hereby authorized and directed to transmit to the Clerk of the Court of Appeals for the Fifth Circuit, and as a part of the record on appeal in this cause, Exhibits A and I of Exchange Bank and Trust Company, Plaintiff, Exhibits A and B of First National Bank in Dallas, Intervener, and Exhibits 1 and 2 of the City of Dallas, Intervener, and said Exhibits need not be copied in the said record on appeal.

Dated: March 5, 1957.
(S.) WM. H. ATWELL,
United States District Judge.

STATEMENT OF POINTS UPON WHICH APPELLANTS, EXCHANGE BANK & TRUST COMPANY, BRIGGS WEAVER MACHINERY CO. and FIRST NATIONAL BANK IN DALLAS, INTEND TO RELY ON APPEAL.

Filed March 4, 1957.

(Title Omitted.)

Appellants, Exchange Bank & Trust Company, Briggs Weaver Machinery Co., and First National Bank in Dallas, state that the points upon which they intend to rely on the appeal in this action are as follows:

1. The Court erred in failing to hold that the prior recorded specific and perfected chattel mortgage liens of Appellants, Exchange Bank & Trust Company, Briggs Weaver Machinery Co. and First National Bank in Dallas on certain assets of the insolvent debtor, Tubbs Mfg. Co., Inc., and the proceeds from the sale thereof, were superior to the claim of the United States of America for priority in payment of taxes under Section 3466 of the Revised Statutes (Section 191 of Title 31, U.S.C.A.).

2. The Court erred in holding that the prior recorded chattel mortgage liens of the Appellants, Exchange Bank & Trust Company, Briggs Weaver Machinery Co. and First National Bank in Dallas, on certain assets of the insolvent debtor, Tubbs Mfg. Co., Inc., and the proceeds from the sale thereof, were inferior and subordinate to the claim of the United States under Section 3466 of the Revised Statutes.

3. The Court erred in failing to hold that Appellants, Exchange Bank & Trust Company, Briggs Weaver Machinery Co. and First National Bank in Dallas, were entitled to payment in full of their secured debts out of the proceeds from the sale of the respective assets of the insolvent debtor, Tubbs Mfg. Co., Inc., upon which said Appellants held prior recorded chattel mortgage liens.

4. The Court erred in holding that the United States of America, under the provisions of Section 3466 of the Revised Statutes, had an absolute priority to have its claim for taxes first satisfied out of the funds realized from the sale of the assets of the insolvent debtor, Tubbs Mfg. Co., Inc., ahead of Appellants, Exchange Bank & Trust Company, Briggs Weaver Machinery Co. and First National Bank in Dallas.

5. The Court erred, after granting judgment to Appellants, Exchange Bank & Trust Company, Briggs Weaver Machinery Co. and First National Bank in Dallas against the insolvent debtor, Tubbs Mfg. Co., Inc., in failing to order foreclosure of said Appellants' prior recorded chattel mortgage liens against the respective portions of the fund realized from the sale of the assets of the insolvent debtor, Tubbs Mfg. Co., Inc. covered by such chattel mortgages.

Dated March 4th, 1957.

BLAKLEY AND WALKER,
By ROBERT A. WILSON,
Attorneys for Appellant, Exchange Bank & Trust Company.

BRADFORD & PRITCHARD,
By W. A. PRITCHARD,
(W. A. Pritchard),
Attorneys for Appellant,
Briggs Weaver Machinery Co.

COKE & COKE,
By CLINTON FOSHEE,
(Clinton Foshee),
Attorneys for Appellant,
First National Bank in Dallas.

Receipt of a copy of the foregoing statement of points relied on on appeal acknowledged this 4th day of March, 1957.

JOHN C. FORD,
(John C. Ford),
Asst. United States Attorney,
Attorney for Appellee,
United States of America.

STATEMENT OF POINTS.

Filed March 4, 1957.

(Title Omitted.)

Comes now the City of Dallas, Appellant in the above entitled cause and files this its Points of Error upon which it predicates its appeal:

First Point.

The Court erred in holding that, on distribution of the proceeds of a Receiver's sale of all property of an insolvent taxpayer corporation, the claim of the United States for taxes due it is superior to a tax lien of the Appellant, City of Dallas, Texas, perfected before the Federal tax lien became effective and was recorded.

Second Point.

The Court erred in holding that the excise and withholding tax claim of the United States which became a lien on the taxpayer's property on August 15, 1956, and was recorded on October 15, 1956, was entitled to priority over City of Dallas ad valorem tax liens which became effective and perfected on January 1, 1955, and January 1, 1956.

Third Point.

The Court erred in ordering the funds from the proceeds of the insolvent taxpayer corporation's assets paid to the United States Government under the

Federal Priority Statute, R. S., Article 3466, Section 191 of Title 31, U.S.C.A., because the claim of the City of Dallas is supported by a general lien under its Charter and heretofore recognized by the Courts as being a general lien which the priority statute above mentioned does not displace.

Fourth Point.

The Court erred in refusing to hold that the claim of the City of Dallas for the taxes which are supported by general lien under the Charter should be paid ahead of the claim of the United States Government which is supported only by a priority under the statute because: (a) The lien of the government was not perfected until October 15, 1956, whereas the City of Dallas lien attached to the property for the 1955 taxes on January 1, 1955, and for the 1956 taxes on January 1, 1956, and was a perfected lien; and because (b) the claims of all the other Claimants are in favor of individuals and are liens by convention and not by operation of law and as such the lien of the City of Dallas being in favor of the sovereign is superior to such private liens.

Fifth Point.

As between the United States Government whose claim is supported by a priority and an asserted lien subsequent to the date of the liens supporting the taxes of the City of Dallas, it was error for the Court to apply the Rule of priorities under Article 3466, R.S., Section 191 of Title 31, U.S.C.A., and displace and postpone the liens of the City of Dallas.

Sixth Point.

The Court erred in granting judgment in favor of the United States Government for the amount of its claim thus displacing the liens of the City of Dallas which support its tax claim because such judgment is contrary to the decision of this Honorable Court in the case of City of Dallas v. Crippen, 171 F. 2d 526, wherein the Court in a similar fact situation recognized the lien of the City of Dallas for the same character of personal property taxes and awarded and directed that the claim of the City of Dallas be satisfied ahead of the claim of the United States Government.

Seventh Point

The Court erred in granting judgment in favor of the United States Government for the amount of its claim thus displacing the liens of the City of Dallas which support its tax claim because such judgment is contrary to the decision of this Honorable Court in the case of U. S. vs. Atlantic Municipal Corporation, 212 F. 2d 709, wherein this Honorable Court held that the Federal Priority Statute was not applicable as against perfected liens.

Eighth Point.

The Court erred in granting judgment in favor of the United States Government for the amount of its claim thus displacing the liens of the City of Dallas which support its tax claim because such judgment is contrary to the decision of this Honorable Court in the case of City of Dallas, et al., v. Ryan, et al., 62

F 2d 959, certiorari denied, 289 U.S. 742, 53 Sup. Ct. 692, 77 L.Ed. 1489, wherein the Court in a similar fact situation recognized the lien of the City of Dallas for the same character of personal property taxes and awarded and directed that the claim of the City of Dallas be satisfied ahead of the claim of the United States Government.

H. P. KUCERA,
R. A. McBEAN,
TED P. MacMASTER,
(Ted P. MacMaster),
Attorneys for Appellant.

Receipt of a copy of the foregoing statement of points relied on on appeal acknowledged this 4th day of March, 1957.

JOHN C. FORD,
(John C. Ford),
Asst. United States Attorney, Attorney for Appellee,
United States of America.

CLERK'S CERTIFICATE.

I, JOHN A. LOWTHER, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct transcript of the record and all proceedings in cause No. 6861 Civil, wherein Exchange Bank & Trust Company, et al., is plaintiff and Tubbs Mfg. Company, Inc., et al., is defendant, as fully as the same now remain on file and of record in my office at Dallas, Texas.

Witness my hand officially and the seal of said Court at Dallas, Texas, this 7th day of March, A. D. 1957.

JOHN A. LOWTHER,
Clerk, U. S. Disrict Court,
Northern District of Texas,
By ELIZABETH McCLELLON,
Deputy.

(Seal)

Office - Supreme Court, U.S.
FILED
SEP 3 1957
JOHN T. FEY, Clerk

No. 425

In the

Supreme Court of the United States

OCTOBER TERM, 1957

CITY OF DALLAS, TEXAS,
Petitioner,

v.

TUBBS MANUFACTURING COMPANY, INC., and UNITED STATES OF AMERICA, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit

H. P. KUCERA,
501 City Hall,
Dallas 1, Texas,
Counsel of Record for Petitioner, City of Dallas, Texas.

TED P. MACMASTER,
R. A. MCBEAN,
501 City Hall,
Dallas 1, Texas,
Of Counsel.

WARLICK LAW, INC.—1207 HORD STREET—DALLAS—RI 1-6711

INDEX

	Page
Report of the Opinion of the Court Below	2
Grounds on Which Jurisdiction is Invoked	2
Questions Presented	2-3
Statutes and Constitutional Provisions Involved	3-5
Statement	5-8
Reason for Granting the Writ	8-14
1. The decision of the Court of Appeals is not in accord with three previous decisions of the Court of Appeals, in which it construed the identical provision (Section 194) (R. 79) of the Charter of the City of Dallas, which has the force and effect of an act of the legislature	8
2. The decision of the Court of Appeals is not in accord with the applicable decisions of the Texas courts construing the same section of the Charter of the City of Dallas	11
3. The decision in this case is not in accord with the Court's previous decision arising under similar statutes in another state	12
4. The decision of the Court of Appeals fails to give recognition to the decisions of the Texas courts that as between private lienholders and the State and a city, the liens of the State and the city supersede the private liens	12
5. The decision of the Court of Appeals fails to recognize and give force and effect to the decisions of the Texas courts in the construction of the statute or Charter provision involved	13
6. The decision of the Court of Appeals in the application of the rule of circuity announced in the case of Samms v. Chicago Title & Trust Company, 111 N. E. 2d 172, under the facts in this case, is erroneous	13

Page

7. The decision of the Court of Appeals, if allowed to stand, will lead to confusion and will impede the orderly collection of taxes necessary for the sustenance of the State and its political subdivisions 14

Conclusion 14

Appendix A—Appeal from the United States District Court for the Northern District of Texas 15-22

Appendix B—Judgment 23-24

Appendix C—Order Denying Hearing 25

Cases

	Page
Brans v. City of Dallas, 217 Fed. 2d 640	10
City of Dallas v. Crippen, 171 Fed. 2d 526	9, 10, 11
City of Dallas v. Western Electric Co., 83 Tex. 243	8
Erie Railroad Co. v. Tompkins, 304 U. S. 64	13
Heinatz v. Allen, 217 S. W. 2d 994	11
In Re Brannon, 62 Fed. 2d 959	8, 10
Kirk v. City of Gorman, 283 S. W. 188	12
Samms v. Chicago Title and Trust Co., 111 N. E. 2d 172	13, 21
State v. Bank of Mineral Wells, 251 S. W. 1107	13
Texas Employers' Ins. Ass'n v. City of Dallas, 5 S. W. 614	11
United States v. Atlantic Municipal Corp., 212 Fed. 2d 709	12, 17
United States v. City of New Britain, 347 U. S. 85	12
Urbish v. City of Dallas, 260 S. W. 2d 148	11

Statutes and Constitutional Provisions

Texas Constitution, Article 11, Section 5	3
Charter of the City of Dallas, Section 194	4
Rules of Decision Act, 28 U. S. C., Section 1652	4, 13

No. .....

In the

Supreme Court of the United States

OCTOBER TERM, 1957

CITY OF DALLAS, TEXAS,

Petitioner,

v.

TUBBS MANUFACTURING COMPANY, INC., and UNITED STATES OF AMERICA, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, City of Dallas, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on June 29, 1957 (Petition for Rehearing in the said cause having been denied on August 5, 1957).

I.

REPORT OF THE OPINION OF THE COURT BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (R. 109), printed in Appendix A hereto, infra, pages 15-22, not yet reported.

II.

GROUNDS ON WHICH JURISDICTION IS INVOKED

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on June 29, 1957 (R. 117), printed in Appendix B, infra, pages 23-24; rehearing was denied on August 5, 1957 (R. 113), Appendix C, infra, page 25; the jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

III.

QUESTIONS PRESENTED

1. Whether a Court of Appeals may, in arriving at a decision in a case under its appellate jurisdiction apply substantive law which is in direct conflict with the decisions of the State Court construing a state statute or a city Charter which has the force and effect of a state statute.

2. Whether a Court of Appeals, after having on three previous occasions construed the identical law construed by the Texas courts, in two of which cases the U. S. Supreme Court had heretofore denied writs of certiorari and now when the question is presented to the Court of Appeals for

the fourth time, may reach a different conclusion from its previous determination, and different from that adopted by the Texas courts.

3. Whether a Court of Appeals may, in arriving at a decision under its appellate jurisdiction in construing similar statutes in one state, reach a different conclusion from that arrived at in another state.

4. Whether a Court of Appeals may, in arriving at a decision construing a state statute or a Charter provision of a city, having the effect of a state statute, disregard a construction placed upon such statute by the state court and adopt its own, contrary to Rules of Decisions Act, 28 U. S. C., Section 1652.

IV.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

1. The Constitutional provision involved in this case is *Article 11, Section 5, of the Texas Constitution*, reading as follows:

> "Sec. 5. Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State; said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half

per cent, of the taxable property of such city, and no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent. thereon; and provided further, that no city charter shall be altered, amended or repealed oftener than every two years. As amended Aug. 3, 1909, proclamation Sept. 24, 1909; Nov. 5, 1912, proclamation Dec. 30, 1912."

2. The Charter provision of the City of Dallas, Section 194, which has the force and effect of an act of the legislature, reads as follows:

"Sec. 194. A lien is hereby created on all property, personal and real, in favor of the City of Dallas, for all taxes, ad valorem, occupation or otherwise. Said lien shall exist from January 1st in each year until the taxes are paid. Such lien shall be prior to all other claims, and no gift, sale, assignment or transfer of any kind, or judicial writ of any kind, can ever defeat such lien, but the Assessor and Collector of Taxes can pursue such property, and whenever found out, may seize and sell enough thereof to satisfy such taxes.

"All persons or corporations owning or holding personal property or real estate in the City of Dallas on the first day of January of each year shall be liable for all municipal taxes levied thereon for such year.

"The personal property of all persons owing any taxes to the City of Dallas is hereby made liable for all of said taxes, whether the same be due upon personal or real property, or upon both."

3. The statutory provision involved in this case is the *Rules of Decision Act, 28 U. S. C., Section 1652*, which reads as follows:

"The laws of the several states, except where the Constitution or treaties of the United States or acts

of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the Courts of the United States, in cases where they apply."

V.

STATEMENT

Exchange Bank & Trust Company filed suit in the 134th Judicial District Court of Dallas County, Texas, against Tubbs Manufacturing Company, Inc., seeking to recover judgment for the sum of $1,580.23, together with a foreclosure of a chattel mortgage and a prayer for the appointment of a receiver to take charge of the personal property subject to the mortgage (R. 1-15). A receiver was appointed by the state court (R. 16-24).

Briggs-Weaver Machinery Company intervened in this suit, and by petition prayed for a judgment for $3,565.15, together with a foreclosure of its chattel mortgage on certain property of the Defendant, and prayed for the enlargement of the powers of the receiver to seize all of the property of the Defendant, and further made the United States a party to the suit (R. 24-34).

The United States filed a petition for removal to the U. S. District Court (R. 38-41). By way of intervention, the United States of America prayed for a judgment against the Defendant, Tubbs Manufacturing Company, Inc., for $8,815.70 with interest, for internal revenue taxes and claimed a lien (R. 41-46).

First National Bank in Dallas filed its petition of intervention and prayed for judgment in the amount of $963.62, together with the foreclosure of its lien on a Ford truck owned by the Tubbs Manufacturing Company, Inc. (R. 47-51).

The City of Dallas intervened and prayed for a judgment to recover ad valorem taxes for the years 1955 and 1956 together with the foreclosure of its tax liens, said taxes amounting to $62.63 for the year 1955, and $72.56 for the year 1956, and prayed that it be paid out of the proceeds of the sale of the personal property seized and sold by the receiver under the orders of the court (R. 54-59).

Tubbs Manufacturing Company, Inc., Defendant, admitted insolvency (R. 52).

The state-appointed receiver was confirmed by the United States District Judge and was given authority to take charge of all the personal property of the insolvent debtor and to sell the same to the highest bidder at a public sale on a designated date (R. 52-54).

The receiver sold the property in three lots and after the payment of expenses, there was deposited into the registry of the Court $5,118.94 (R. 69). The receiver divided the personal property into five separate lots; however, Lots 1, 2 and 5 included the property subject to the mortgage of the Exchange Bank & Trust Company, *and the remaining property not subject to any mortgage.* Lot 3 covered the Ford pickup truck mortgaged to the First National Bank.

Lot 4 included the property subject to the mortgage of the Briggs-Weaver Machinery Company (R. 69).

All the parties entered into a stipulation and agreed that the cause may be tried on stipulated facts (R. 68-86). The various parties claimed that their liens were effective on the days and dates as follows:

(a) The liens of the City of Dallas attached as of January 1, 1955, and January 1, 1956, respectively;

(b) The lien of the Government was supported by an assessment on August 15, 1956, and was filed of record on October 15, 1956;

(c) The lien of the Exchange Bank & Trust Company bears date of November 19, 1953, and was recorded November 25, 1953;

(d) The lien of the Briggs Weaver Machinery Company bears date of April 28, 1955, and was recorded May 3, 1955; and,

(e) The lien of the First National Bank in Dallas bears date of November 2, 1955, and was registered with the Texas Highway Department on November 17, 1955.

The trial court in its opinion (R. 87-89), disregarded all the liens and held that the U. S. Government is entitled to have its claim satisfied under Section 3466, which is known as the priority statute.

Judgment was entered accordingly for the U. S. Government, from which the Petitioner and the other parties appealed (R. 89-92).

The Court of Appeals reversed the trial court and held that the Exchange Bank & Trust Company, Briggs-Weaver

Machinery Company, and First National Bank in Dallas have liens which anti-date the lien of the United States, and, therefore, are entitled to be paid ahead of the Government. The Court further held that out of the part of the proceeds from the sale of the individual parcels of mortgaged property, the three above named private claimants had to pay the taxes to the City of Dallas specifically assessed against the respective property covered by their respective mortgages. *The court, however, did not provide for the payment of the balance of the taxes to the City of Dallas because the taxes of the City of Dallas also covered non-mortgaged property, all of which, together with the mortgaged property, were seized and authorized by the court to be sold, and were sold by the receiver as such.*

VI.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Appeals is not in accord with three previous decisions of the Court of Appeals, in which it construed the identical provision (Section 194) (R. 79) of the Charter of the City of Dallas, which has the force and effect of an act of the legislature.

Section 194 of the Charter of the City of Dallas (which has the force and effect of a legislative grant by virtue of Article 11, Section 5 of the Texas Constitution, and as held by the Texas Supreme Court in *City of Dallas v. Western Electric Company, 83 Tex. 243*), was first construed by the Court of Appeals for the Fifth Circuit in the bankruptcy case of *In Re Brannon, 62 Fed. 2d 959*, in 1933. There, the

City asserted that under Section 194 of the Charter, it had a prior, superior, general, perfected, true and specific lien good as against private claimants, either secured or unsecured. The Court held that the tax lien of the City of Dallas for the years 1929, 1930 and 1931, on merchandise consisting of changing stock of goods, was a valid lien attached to all the personal property coming into the hands of the trustee good in bankruptcy, and used the following language:

> "We think a true general lien for all city taxes is given the City of Dallas by the language last quoted, which adheres to the property notwithstanding its transfer and which, requiring no record, is good as a lien in bankruptcy. All property of the taxpayer falls under it, so that it is unnecessary to identify that assessed for the particular tax.
>
> * * * * *
>
> "We therefore think that the taxes due the City of Dallas have a first and general lien and must be first satisfied."

Petition for certiorari was denied *289 U. S. 72.*

In 1948, the same Charter provision was again construed by the Court of Appeals for the Fifth Circuit, in the case of *City of Dallas v. Crippen, 171 Fed. 2d 526 (writ of certiorari denied 336 U. S. 737).* In that case bankruptcy intervened during the month of February and the taxes were assessed in May. The suit was a contest between the City of Dallas and the U. S. Government, as to whether the lien of the City of Dallas for the personal property taxes of the bankrupt came ahead of an unsecured tax claim of the U. S. Government. The Court re-examined the

pertinent Texas decisions in an exhaustive opinion, and reaffirmed the decision in the *Brannon* case, supra. The Court used the following language:

> "Our conclusion is that Section 194 of the Dallas Charter fixes a lien on personal property actually within the City on the specific date; and that the City has such a lien for its taxes, which was preserved in bankruptcy, but that the payment of the claim therefor is required to be postponed until payment of the debts specified in clauses (1) and (2) of subdivision a of Section 104 of Title XI of the United States Code Annotated. See Section 107, subs. b and c of said Title. In determining the order of distribution between the City of Dallas and the United States, a careful distinction must be made between tax liens and tax priorities. It is well settled that claims for taxes secured by valid lien, like other valid liens, must be satisfied out of the bankrupt's estate before any distribution at all begins under Section 64, subject, however, to an express statutory exception inserted by the 1938 Act in Section 67, sub. c which provides for postponement in payment of tax liens in certain circumstances."

The Court of Appeals for the Fifth Circuit, for the third time, considered Section 194 of the Charter of the City of Dallas, in 1954, in the case of *Brans v. City of Dallas, 217 Fed. 2d 640*. The referee had ruled that the tax claim of the City was filed too late. The District Court reversed an order of the referee and directed the receiver to pay taxes on personal property due by bankrupt. In that opinion, Chief Judge Hutcheson, in affirming the judgment of the trial court, used the following language.

> "Under settled law,[1] the City had a tax lien on the properties from the sale of which the funds in the trustee's hands were derived and to the extent necessary to discharge the debt secured by the lien, the

proceeds of the sale of the property were withdrawn from or taken out of the assets of the estate.

"[1]*In Re Brannon, 5 Cir., 62 Fed. 2d 959; City of Dallas v. Crippen, 5 Cir., 171 Fed. 2d 526.*"

2. The decision of the Court of Appeals is not in accord with the applicable decisions of the Texas courts construing the same section of the Charter of the City of Dallas.

Prior to the decision by the Fifth Circuit Court in the *Brannon* case, the Texas Court of Civil Appeals, in *Texas Employers' Insurance Ass'n v. City of Dallas, 5 S. W. 614* (writ of error refused by the Supreme Court, thereby approving the holding: *Heinatz v. Allen, 217 S. W. 2d 944)*, held in a tax suit against the insurance company that the funds of the insurance company were taxable at its home office, and were subject to the lien of the City of Dallas given it by its Charter to secure their collection. The Court used the following language:

> "We can see no reason why it should not be subjected to the tax lien given the plaintiff by law."

The same Charter provision was again considered by the Texas Court of Civil Appeals in the case of *Urbish v. City of Dallas, 260 S. W. 2d 148, in 1953 (writ dismissed by the Supreme Court of Texas)*. In that case, the Court reaffirmed the recognition of the lien given to the City of Dallas for taxes on personal property recognized in *Texas Employers' Insurance Ass'n v. City of Dallas*, and also on the basis of the decisions in *In Re Brannon*, and *City of Dallas v. Crippen*, supra:

3. The decision in this case is not in accord with the Court's previous decision arising under similar statutes in another state.

In the case of *United States v. Atlantic Municipal Corporation, 212 Fed. 2d 709*, denied May, 1954 by the same Circuit Court of Appeals, the Court had before it a question of deciding the issue between the State of Florida, one of its counties, and the city, all claiming liens which were created by Florida statutes and arose January 1, 1949, against property of an insolvent debtor and the claim of the United States Government for income and excess profit taxes, which became a lien on May 1, 1949. The Court held that the claim of the Government seeking priority under Section 3466, 31 U. S. C. A., Section 191, must be rejected, and applied the rule of "first in time is the first in right," and based its decision on the case of *United States v. City of New Britain, 347 U. S. 85.*

It is thus seen that one rule is applied in Florida, and another one in Texas.

4. The decision of the Court of Appeals fails to give recognition to the decisions of the Texas courts that as between private lienholders and the State and a city, the liens of the State and the city supersede the private liens.

In *Kirk v. City of Gorman, 283 S. W. 188*, the Texas court held that it is competent for the legislature to provide priority for a lien supporting taxes over those of private liens, regardless of whether the private lien anti-dates the

liens of the city or the state. The same conclusion was reached by the Texas court in the case of *State v. Bank of Mineral Wells, 251 S. W. 1107.*

5. The decision of the Court of Appeals fails to recognize and give force and effect to the decisions of the Texas courts in the construction of the statute or Charter provision involved.

The holding in this case by the Court of Appeals is in conflict with the decision in the case of *Erie Railroad Company v. Tompkins, 304 U. S. 64*, and with the *Rules of Decision Act, U. S. C., Section 1652.*

6. The decision of the Court of Appeals in the application of the rule of circuity announced in the case of SAMMS v. CHICAGO TITLE & TRUST COMPANY, 111 N. E. 2d 172, under the facts in this case, is erroneous.

There is no question of mere priorities in this case with which Section 3466 deals, but purely a question of liens, the dates of which have been established without dispute. The Bankruptcy Act, as construed by the courts, clearly recognizes the tax lien of Petitioner and its status as between private claimants and the United States Government. There is no difference between the application of the provisions of the Bankruptcy statute to liens and claims from those of the Insolvency Statute, with which Section 3466 deals. The *New Britain* case, we believe, by adopting the rule announced in *Rankin v. Scott, 12 Wheat 177, 6*

L. Ed. 592, settled the issue. The application of the rule announced in the *New Britain* case should, under the facts, govern this case.

7. The decision of the Court of Appeals, if allowed to stand, will lead to confusion and will impede the orderly collection of taxes necessary for the sustenance of the State and its political subdivisions.

To say that it is necessary for a city to identify and value separately each item of personal property of a business institution and trace them and identify them in the hands of a receiver places an undue, if not impossible, burden upon state and local governments to meet.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

H. P. KUCERA,
501 City Hall,
Dallas 1, Texas,
Counsel of Record for Petitioner.

TED P. MACMASTER,
R. A. MCBEAN,
501 City Hall,
Dallas 1, Texas,
Of Counsel.

APPENDIX A

In the

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16565

EXCHANGE BANK & TRUST COMPANY and BRIGGS WEAVER MACHINERY CO., FIRST NATIONAL BANK IN DALLAS and CITY OF DALLAS, TEXAS, Intervenors,

Appellants,

versus

TUBBS MANUFACTURING COMPANY, INC., and UNITED STATES OF AMERICA,

Appellees.

Appeal from the United States District Court for the Northern District of Texas.

(June 29, 1957.)

Before HUTCHESON, Chief Judge, and TUTTLE and CAMERON, Circuit Judges.

HUTCHESON, Chief Judge: Submitted on stipulated facts,[1] this case presented below, it presents here a single question. This is whether under the priority statute, Rev. Stat. 3466, 31 U. S. C. A. 191, the United States, the appellee, was entitled to have its debt for taxes first satisfied out of the proceeds of the sale of all of the assets of Tubbs Manufacturing Co., an insolvent taxpayer corporation, ahead of the tax lien claims of the Exchange Bank & Trust Co., the First National Bank, and the Briggs Weaver Machinery Co., the appellants herein.

---

[1] In a suit filed by the Exchange Bank & Trust Co. in the State District Court on Oct. 26, 1956 (later removed to the United States District Court), to recover judgment for the unpaid balance of its debt, to foreclose its chattel mortgage lien and to have the machinery and equipment covered by the mortgage sold and the proceeds applied in payment thereof, the court appointed receiver of the insolvent Tubbs Mfg. Co. sold all of its assets free and clear of all liens for the total sum of $6349.00. After deducting the expenses of the receivership proceedings, the balance of $5118.94 was deposited in the registry of the court to await determination of the rights of the respective claimants thereto.

The Exchange Bank & Trust Co. had chattel mortgages dated November 19, 1953, recorded Nov. 25, 1953, and June 30, 1954, recorded July 14, 1954, securing those claims in the net amount of $1436.57, on that portion of the assets which were sold for $5059.

The First National Bank had a chattel mortgage dated 11-2-55 on a 1956 Ford Truck, which was sold for $890, to secure its claim in the net amount of $963.62.

Briggs Weaver Machinery Co. had a chattel mortgage dated April 28, 1955, recorded May 3, 1955 (on that portion of the assets which were sold for $400), to secure its claim in the net amount of $2,466.71.

The City of Dallas had levied and assessed personal property taxes against Tubbs for the year 1955 on Sept. 12, 1955, in the amount of $62.63, and for the year 1956 on Sept. 4, 1956, in the amount of $72.56.

The United States of America levied and assessed excise taxes in the amount of $5503.95 and withholding taxes in the amount of $3315.77 against Tubbs on Aug. 15, 1956, and filed its notice of tax lien to secure the payment of said taxes on Oct. 15, 1956.

The district court, after a trial, held that under the provisions of the priority statute,[2] the claim of the United States was prior and superior to all the other claims and gave judgment for the United States.

Appealing from that judgment, the mortgage lien claimants are here contending that the liens created by their chattel mortgages were valid first liens on the respective properties covered, that they attached to the proceeds received from the sale of the respective properties and that they are, therefore, entitled to have applied to their claims the amount of such respective proceeds necessary to satisfy their claims in full.

The appellant, City of Dallas, contends that under the provisions of Sec. 194 of its charter, its claim for taxes is secured by a lien prior and superior to all other claims and it is therefore entitled to be paid ahead of everyone else.

On its part, the appellee, the United States of America, is here contending that the holding of the trial court was correct, and insisting that the judgment should be affirmed.

In support of their claims, the lien claimants invoke and rely strongly on the decision of this court in *United States v. Atlantic Municipal Corporation*, 212 F. 2d 709, in which,

[2] "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed." 31 USCA, Sec. 191.

holding that the priority statute has no application to a valid, specific and perfected, a fully choate lien, the court declared:

> "* * * This statute applies only as against unsecured debts, that is, debts not secured by a specific and perfected lien. It has never been, we think it will never be, applied as it is sought to be applied here, to accord payment to a debt due the United States in preference to a claim secured by a lien which is prior in time and superior in law to the lien of the United States securing the debt for which preferential payment is sought."

Urging upon us that under that decision and Sec. 6323 of the Internal Revenue Code of 1954, formerly Sec. 3672 I. R. C. 1939, mortgage liens cannot, under a claim of priority, be postponed to a federal tax debt, they insist that the judgmnet was wrong and must be reversed.

The United States, on its part, urging upon us that the claim of the United States, by virtue of the provisions of Sec. 3466 of the Revenue Statutes, the priority section, will be accorded priority over the unperfected, the inchoate tax claim of the City of Dallas, and that it in turn is clearly superior to the chattel mortgage lien claims of the other appellants, insists that of necessity its claim must be prior to those claims, since it is admitted that their claims are subject to the City's tax lien. In addition, arguing that the Supreme Court has never held that even a specific and perfected lien would defeat a Sec. 3466 priority claim and that if the liens of the claimants are specific and per-

fected, this would not avail them, it insists that under federal law appellants' liens are not so specific and perfected since the debtor had not on the date of insolvency been divested either of title or possession of the mortgaged property.

We cannot agree with these views. On the contrary, for the reasons stated by us in the Atlantic case, *supra*, and for the additional reason that in this case the mortgage liens are within Sec. 6323, I. R. C. of 1954 (formerly Sec. 3672) and are specifically preserved by that statute against federal tax liens, *U. S. v. Sec. Trust Co.*, 340 U. S. 47, concurring opinion page 51, and *United States v. Scovil*, 348 U. S. 218, we are in no doubt that the claim of the United States to priority over the mortgage claims is without foundation.

We will not, therefore, contribute to the confusion arising from the decisions dealing with the relative standing as to priority of federal tax debts and liens and the numerous and unavailing attempts to rationalize and reconcile them. We will content ourselves with saying that upon a consideration of the relevant facts and a review of the authorities now extant, we are of the clear opinion that

---

One of the most thorough and comprehensive of these is the July 15, 1956, Report of the Committee on Relative Priority of Government and Private Liens, American Bar Association Section of Real Property, Probate and Trust Law. Among the numerous articles in legal periodicals referred to in this report deserving of special notice may be cited: "The Relative Priority of the Federal Government: The Pernicious Career of the Inchoate and General Lien" (5-17-94), 63 Yale Law Journal, 905; and "Priority of the Subsequent Federal Tax Lien over an Antecedent Inchoate Lien" (April, 1956), 54 Michigan Law Review, 829.

the claim of the United States to priority over the mortgage lien claims is unfounded, and that, on the appeal of the mortgage lien claimants, the judgment must be reversed with directions to provide for the payment of the claim of each out of the proceeds of the property on which its lien was fixed, subject, however, to first payment thereout of the City's tax claims.

We thus, while affording protection to the City's claims for taxes by directing their payment, reject both the claim of the City that, under In Re: Brannon, 62 F(2) 959 and *City of Dallas v. Crippen*, 171 F(2) 256, "its general lien"[4] defeats the priority claim of the United States and the contention of the United States that, because we have concluded that its claim is entitled to priority over the City's claim and the City's claim is entitled to payment ahead of the mortgage lien claims, the circuity problem presented thereby compels the solution adopted in *State v. Nix*, 159(2) 214, putting the claim of the United States ahead of them both.

We do this, as to the City's claim, which is admittedly not within Section 6323, on the authority of the cases relied on by the United States.[5] We do this as to the claim of the

[4]Par. E 12 of the stipulation provides:

"That under the provisions of Sec. 194 of the Charter of the City of Dallas the defendant, City of Dallas, has a general lien upon all the property involved herein for the 1955 and 1956 taxes owing by the Tubbs Mfg. Co., Inc. to the said City of Dallas."

[5]New York v. Maclay, 288 U. S. 290; Spokane County v. U. S., 279 U. S. 80; United States v. Gilbert Associates, Inc., 345 U. S. 361; United States v. New Britain, 347 U. S. 81; United States v. Texas, 314 U. S. 480; United States v. Waddill, Holland and Flinn, Inc., 323 U. S. 353; United States v. White Bear Brewing Co., 350 U. S. 1010.

United States, both on the ground that the invoked decision in the *Nix* case, *supra*, while correct, indeed inevitable under its facts and the decisions of the Supreme Courts of Texas and of the United States, is not in point here in law or in fact, and on the ground that we agree with the well reasoned opinion of the Appellate Court of Illinois in *Samms v. Chicago Title & Trust Co.*, *11* NE(2) 172, and the solution of the circuity problem[6] adopted there. Cf. *Smith v. United States*, 113 F. Supp. 702 at 710-711 and 67 Harvard Law Review at p. 358.

The judgment awarding the United States priority and directing the clerk to issue his check to it for the moneys on deposit, received from the sale of the assets of the debtor is accordingly reversed, and the cause is remanded with directions to enter judgment awarding priority to the respective mortgage claimants, subject to payment of the city's taxes due on the respective properties, and directing the clerk to issue his check to each of the claimants in payment of its debt to the extent that the funds

[6]The circuity problem in general is interestingly discussed at pp. 927-28, 63 Yale Law Journal, Note 3, supra, where the author points out that in Brown v. General Laundry, 139 Conn. 363, 94 Atl. 2d 10, the Connecticut Supreme Court of Errors having resolved a tri partite priority problem as the courts of Texas had originally done by relegating the claim of the United States to the lowest rung on the priority ladder, the Supreme Court on the appeal of the United States, suggesting that the United States was not concerned with the relative priorities between the city, the mortgagee, and the judgment creditor, provided that the government's claim was subordinated only to an amount equal to the claims of the mortgage and judgment creditor, left the court in a position on remand to follow the state policy by appropriating the funds set aside by the Supreme Court for the mortgagee and judgment creditor to the payment of the city's liens.

derived from the property secured by its mortgage permit, and to issue his check to the United States for the balance remaining undistributed.

REVERSED and REMANDED.

(Seal)
A true copy Test:

/s/ Edward W. Wadsworth
EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals,
Fifth Circuit, New Orleans,
Louisiana

APPENDIX B

JUDGMENT

Extract from the Minutes of June 28, 1957.

No. 16565

EXCHANGE BANK & TRUST COMPANY and BRIGGS WEAVER MACHINERY CO., FIRST NATIONAL BANK IN DALLAS, and CITY OF DALLAS, TEXAS, Intervenors,

versus

TUBBS MANUFACTURING COMPANY, INC., and UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court awarding the United States priority and directing the clerk to issue his check to it for the moneys on deposit, received from the sale of the assets of the debtor in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with directions to enter judgment awarding priority to the respective mortgage claimants, subject to payment of the city's taxes due on the respective properties,

and directing the clerk to issue his check to each of the claimants in payment of its debt to the extent that the funds derived from the property secured by its mortgage permit, and it issue his check to the United States for the balance remaining undistributed.

APPENDIX C

ORDER DENYING REHEARING

Extract from the Minutes of August 5, 1957.

No. 16565

EXCHANGE BANK & TRUST COMPANY and BRIGGS WEAVER MACHINERY CO., FIRST NATIONAL BANK IN DALLAS, and CITY OF DALLAS, TEXAS, Intervenors,

versus

TUBBS MANUFACTURING COMPANY, INC., and UNITED STATES OF AMERICA.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	4
Conclusion	8

CITATIONS

Cases:

Conrad v. *Atlantic Insurance Co.*, 1 Pet. 386	6
Field v. *United States*, 9 Pet. 182	6
Illinois v. *Campbell*, 329 U. S. 362	5, 6, 7
Illinois v. *United States*, 328 U. S. 8	6
Massachusetts v. *United States*, 333 U. S. 611	6
Michigan v. *United States*, 317 U. S. 338	5
New York v. *Maclay*, 288 U. S. 290	5
Spokane County v. *United States*, 279 U. S. 80	5, 6
Thelusson v. *Smith*, 2 Wheat. 396	6
United States v. *Gilbert Associates*, 345 U. S. 361	5, 6, 7
United States v. *New Britain*, 347 U. S. 81	6, 7
United States v. *Oklahoma*, 261 U. S. 253	6
United States v. *Security Tr. & Sav. Bk.*, 340 U. S. 47	6
United States v. *Texas*, 314 U. S. 480	5, 6
United States v. *Waddill Co.*, 323 U. S. 353	5, 6
Wisniewski v. *United States*, 353 U. S. 901	7

Statute:

Revised Statutes, Sec. 3466 (31 U. S. C. 1952 ed., Sec. 191)	2, 4, 5, 7

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 425

CITY OF DALLAS, TEXAS, PETITIONER

v.

TUBBS MANUFACTURING COMPANY, INC., AND UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 15–22) is not yet reported. The oral opinion of the District Court (R. 87–89)[1] was not reported.

JURISDICTION

The judgment of the Court of Appeals was entered June 29, 1957 (Pet. 23–24). Petition for rehearing was denied August 5, 1957. The petition for a writ of certiorari was filed September 3, 1957. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

[1] Record references herein are to the printed record in the Court of Appeals.

QUESTION PRESENTED

Whether in the case of an insolvent taxpayer the debt due the United States for unpaid taxes is entitled to priority in payment, under Section 3466 of the Revised Statutes, over the tax claim of the City of Dallas.

STATUTE INVOLVED

Revised Statutes:

> SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

(31 U. S. C. 1952 ed., Sec. 191.)

STATEMENT

This action was originally brought by the Exchange Bank & Trust Company against the Tubbs Manufacturing Company in a Texas State court (R. 1–15) to recover judgment for the unpaid balance of a debt, to foreclose its chattel mortgage lien, and for appointment of a receiver and sale of the mortgaged property to satisfy the judgment. A receiver was appointed (R. 16–24), the debtor being then insolvent (R. 52).

The United States, having been made a party by intervening petitioner Briggs Weaver Machinery Company, had the action removed to the United States District Court for the Northern District of Texas (R. 38–39), where the United States (R. 41–46), the First National Bank in Dallas (R. 47–49), and the City of Dallas (R. 54–59) also asserted claims against the debtor. The receiver sold the property of the debtor free and clear of liens for a total sales price of $6,349, and after deducting fees and expenses deposited the balance of $5,118.94 in the registry of the District Court (R. 68–69).

Asserted against this amount were five claims (Pet. 16, R. 69–84):

(1) The Exchange Bank & Trust Company had chattel mortgages dated November 19, 1953 (recorded November 25, 1953), and June 30, 1954 (recorded July 14, 1954), securing claims in the net amount of $1,436.57 on that portion of the assets which were sold for $5,059;

(2) The First National Bank in Dallas had a chattel mortgage dated November 2, 1955, registered with the Texas Highway Department on November 17, 1955, on a 1956 Ford truck, which was sold for $890, to secure its claim in the net amount of $963.62;

(3) The Briggs Weaver Machinery Company had a chattel mortgage dated April 28, 1955, recorded May 3, 1955, on that portion of the assets which was sold for $400, to secure its claim in the net amount of $2,466.71;

(4) The City of Dallas had levied and assessed personal property taxes against the Tubbs Manufactur-

ing Company for the year 1955 on September 12, 1955, in the amount of $62.63, and for the year 1956 on September 4, 1956, in the amount of $72.56;

(5) The United States had claim for excise taxes in the amount of $5,503.95, and for withholding taxes in the amount of $3,315.77, which had been assessed against the Tubbs Manufacturing Company on August 15, 1956, and notice of lien filed on October 15, 1956.

The funds on deposit not being sufficient to pay all claims, the District Court held that the claim of the United States was entitled to priority under Section 3466 of the Revised Statutes, and entered judgment for the United States for the full amount on deposit (R. 87–92). On appeal, the Court of Appeals held that (1) the claims of the mortgagees had priority over the tax claim of the United States, but not over the tax claim of the City of Dallas; (2) the tax claim of the United States had priority over that of the City. Accordingly, it directed the District Court to enter judgment awarding priority to the respective mortgagee claimants, subject to payment of the City's taxes, the balance to be paid to the United States (Pet. 16–24).

ARGUMENT

The United States not having petitioned for a review of that part of the Court of Appeals' judgment awarding priority to the chattel mortgage claimants, the single issue presented by this petition is whether under Section 3466 of the Revised Statutes, *supra*, p. 2, the tax claim of the United States against the

insolvent debtor is entitled to priority over the tax claim of the City of Dallas. That issue has been settled by numerous decisions of this Court, with which the decision below is in complete accord. There is no conflict, nor any other reason for further review.

1. Section 3466 of the Revised Statutes prescribes that "Whenever any person indebted to the United States is insolvent, * * * the debts due to the United States shall be first satisfied * * *." The priority accorded the United States in the collection of claims against an insolvent is by the terms of the statute absolute. In a long line of cases this Court has repeatedly held that an adverse lien which has not become both specific and perfected before the debtor becomes insolvent cannot serve to deprive the United States of its priority right.[2] *United States* v. *Gilbert Associates*, 345 U. S. 361; *Illinois* v. *Campbell*, 329 U. S. 362; *United States* v. *Waddill Co.*, 323 U. S. 353; *United States* v. *Texas*, 314 U. S. 480; *New York* v. *Maclay*, 288 U. S. 290; *Spokane County* v. *United*

[2] In several of the cases, the Court has posed but left unanswered the question of whether even a specific and perfected adverse lien can serve as an exception to the absolute priority accorded claims of the United States by the terms of Revised Statutes, Section 3466. *United States* v. *Texas*, 314 U. S. 480, 485–486; *New York* v. *Maclay*, 288 U. S. 290, 294; *Spokane County* v. *United States*, 279 U. S. 80, 95; *Michigan* v. *United States*, 317 U. S. 338, 341. "This Court has never actually held that there is such an exception." *United States* v. *Gilbert Associates*, 345 U. S. 361, 365. In each instance, the Court has found it unnecessary to reach and decide the question, having concluded that the adverse lien was not sufficiently specific and perfected.

States, 279 U. S. 80; *United States* v. *Oklahoma*, 261 U. S. 253; *Thelusson* v. *Smith*, 2 Wheat. 396; *Field* v. *United States*, 9 Pet. 182; *Conard* v. *Atlantic Insurance Co.*, 1 Pet. 386; cf. *United States* v. *New Britain*, 347 U. S. 81; *United States* v. *Security Tr. & Sav. Bk.*, 340 U. S. 47; *Massachusetts* v. *United States*, 333 U. S. 611; *Illinois* v. *United States*, 328 U. S. 8. To be "specific," the adverse lien must, among other requirements, attach to particular items of the debtor's property. *Illinois* v. *Campbell*, *supra*, pp. 373, 375–376; *United States* v. *Waddill Co.*, *supra*, p. 359; *United States* v. *Texas*, *supra*, p. 485. To be "perfected," the lien must be enforced at least to the point of divesting the debtor of either title or possession. *United States* v. *Gilbert Associates*, *supra*, pp. 365–366; *United States* v. *Security Tr. & Sav. Bk.*, *supra*, p. 51; *Illinois* v. *Campbell*, *supra*, pp. 375–376; *United States* v. *Waddill Co.*, *supra*, 357–360. Whether an adverse lien has become sufficiently specific and perfected to overcome the federal priority presents, of course, a federal question. The priority established by Congress in favor of the United States may not be impaired by state legislation or state court decisions creating interests in the debtor's property in favor of third parties. *United States* v. *Gilbert Associates*, *supra*; *Illinois* v. *Campbell*, *supra*, p. 371; *United States* v. *Waddill Co.*, *supra*, p. 357. See also *United States* v. *Security Tr. & Sav. Bk.*, *supra*, p. 49; *United States* v. *New Britain*, *supra*.

No claim is or can be made here that the tax lien of the City of Dallas had become specific and per-

fected prior to the debtor's insolvency. On the contrary, as the court below noted (Pet. 20), it is stipulated that the City had only a "general lien" upon all of the debtor's property. Moreover, no steps to enforce its lien had been taken, the property being taken over and sold by the receiver. The City's claim to priority of its tax lien over that of the United States rests essentially on the theory, rejected by this Court, that liens created by state law, even though inchoate, are paramount to federal tax claims against an insolvent taxpayer.

2. Far from alleging conflict with any decision of this Court or of any of the Courts of Appeals, the City merely asserts (Pet. 8–11) that the court below failed to follow its own decisions. But even if the decisions of that court are not in harmony with each other, that would not furnish sufficient basis for review by this Court (cf. *Wisniewski* v. *United States*, 353 U. S. 901); and, in any event, its decision in this case is in accord with the controlling decisions of this Court. As for the City's contention (Pet. 11–13) that the decision below is not in accord with Texas court decisions, the contention disregards the repeated holdings of this Court that the question of the relative priority of federal and local tax claims is one of federal law. The City's suggestion (Pet. 13–14) that Section 3466 has no applicability here is patently without merit. See *United States* v. *Gilbert Associates*, supra, pp. 365–366; *Illinois* v. *Campbell*, *supra*; *United States* v. *New Britain*, *supra*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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OCTOBER 1957.

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JOHN T. FEY, Clerk

No. 425

In the

Supreme Court of the United States

OCTOBER TERM, 1957

CITY OF DALLAS, TEXAS,
Petitioner,

v.

TUBBS MANUFACTURING COMPANY, INC., AND UNITED STATES OF AMERICA, *et al.*,
Respondents.

PETITION FOR REHEARING AFTER DENIAL OF WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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December 3, 1957.

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INDEX

	Page
Questions Presented	1-3

Citations

Ashton v. Cameron County Water Improvement District, 289 U. S. 513	10
In Re Brannon, 62 F. 2d 959 (Cert. Denied), 289 U. S. 742	5, 12
Brans v. City of Dallas, 217 F. 2d 640	6
City of Dallas v. Crippen, 171 F. 2d 526 (Cert. Denied), 369 U. S. 936	6, 12
Continental Illinois National Bank & T. Co. v. Chicago RI&P Railroad Co., 294 U. S. 648	12
Hanover National Bank v. Moyses, 186 U. S. 181	12
Illinois v. Campbell, 329 U. S. 362	8, 9
Kirk v. City of Gorman, 283 S. W. 188	7
New York v. Maclay, 288 U. S. 290	9
Rankin v. Scott, 12 Wheat. 149, 6 L. Ed. 592	3
Spokane County v. U. S., 279 U. S. 80	9
Sturges v. Crowninshield, 4 Wheat. 122	12
Texas Employers' Insurance Association v. City of Dallas, 5 S. W. 2d 614	7
U. S. v. Atlantic Municipal Corporation, 212 F. 2d 709	8
U. S. v. City of New Britain, 347 U. S. 81	7
U. S. v. Emory, 314 U. S. 423	3
U. S. v. Gilbert Associates, 345 U. S. 361	8
U. S. v. Texas, 314 U. S. 480	9
U. S. v. Waddill Co., 323 U. S. 353	9
Urbish v. City of Dallas, 260 S. W. 148	7

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PETITION FOR REHEARING AFTER DENIAL OF WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner City of Dallas respectfully prays for a rehearing and reversal of the order heretofore entered on the 12th day of November, 1957, denying its Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, on the following grounds:

1.

The lien of the Petitioner is a true, general, perfected, choate lien for all city taxes, adheres to the property not-

withstanding its transfer, requires no recording, adheres to all of the property of the taxpayer so that it is unnecessary to identify the specific property although specific property is assessed, arises by operation of law as of January 1 of each year in question, the amount thereof is certain and ascertainable and can be obtained by any person by inquiry at the office of the City Tax Collector, whereas the priority asserted under R. S. 3466, or lien if perfected, does not operate against any specific property and is being asserted against innocent purchasers without notice so that no person dealing with taxpayer's property has an opportunity to find out if the government has any claim against the taxpayer until such time as the government either asserts its priority in some legal proceedings, or records its lien, and has no reference to point of time when liability for the government tax accrues and for that reason petitioner's lien under the facts should be recognized as being ahead of any priority asserted by the government and also ahead of the government's lien which is admittedly junior in point of time.

2.

Since the purpose of the Federal Lien Statute and the State Lien Statute is the same, i. e., the securing of better tax collection in the enactment of which each sovereign acts within its orbit of taxation, the position of the government that it is not bound by any state statute creating a lien to

secure the collection of the taxes for itself and its political subdivisions in effect amounts to a denial to the state of its power to assess, levy and collect taxes to support its state government and political subdivisions, in violation of the Fifth Amendment of the Constitution, and clause 4, Section 8 of Article I of the Constitution, which requires that Bankruptcy laws shall be uniform.

3.

The U. S. Rev. Stat. 3466 was originally enacted on the 3rd day of March 1797, and the first uniform bankruptcy act was passed by Congress on July 1, 1898, and thereafter modified from time to time, and although the Supreme Court in the case of *U. S. v. Emory, 314 U. S. 423*, held that the Bankruptcy Act did not supersede this statute, yet the two acts are incompatible because in *Rankin v. Scott, 12 Wheat, 177, 6 L. Ed. 592*, the Court held that the Insolvency Statute gave the government priority only on that part of the estate not incumbered by private liens, and since admittedly the United States has a junior lien in point of time, it cannot, under the Insolvency Statute, Article 3466, override and destroy the true, specific choate lien of the petitioner.

4.

This rehearing should be granted for the reason that this Court has granted writs of certiorari in similar cases which are now pending on the Docket of this Court and the decisions in those cases will vitally affect the rights of the Petitioner.

CONCLUSION

This Motion for Rehearing should be granted and the Order denying the Petition for Writ of Certiorari should be reversed and the Writ granted.

Respectfully submitted,

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December 3, 1957

I hereby certify that the above Petition for Rehearing is presented in good faith and not for delay, and that said Petition is restricted to the grounds above specified.

Dated December 3, 1957.

/s/ Kucera
Attorney for Petitioner.

ARGUMENT IN SUPPORT OF PETITION FOR REHEARING

1. The Fifth Circuit Court of Appeals has on three previous occasions construed the Charter of the City of Dallas and determined the nature and character of the lien of Petitioner, City of Dallas:

In the case of *In Re Brannon, 61 F. 2d 959 (Cert. Denied), 289 U. S. 742 (Jan. 1933)*, the Court construed Section 194 of the Charter of the City of Dallas, which provides:

> "A lien is hereby created on all property, personal and real, in favor of the City of Dallas for all taxes, ad valorem, occupation or otherwise. Said lien shall exist from January 1st in each year until all the taxes are paid. Such lien shall be prior to all other claims and no gift, sale, assignment or transfer of any kind or judicial writ of any kind can ever defeat such lien."

The Court in arriving at its holding that the City has a true, perfected general choate lien used the following language:

> "* * * We think a true general lien for all city taxes is given the City of Dallas by the language last quoted, which adheres to the property notwithstanding its transfer and which, requiring no record, is good as a lien in bankruptcy. All property of the taxpayer falls under it, so that it is unnecessary to identify that assessed for the particular tax.
>
> * * * * *
>
> "We therefore think that the taxes due the City of Dallas have a first and general lien and must be first satisfied."

In *City of Dallas v. Crippen, 171 F. 2d 526 (Cert. Denied), 336 U. S. 937 (Dec. 1948)*, the Court again construed the same charter provision of the City of Dallas and reiterated and affirmed the holding in the *Brannon* case, supra, in the following language:

> "Our conclusion is that Section 194 of the Dallas charter fixes a lien on personal property actually within the City on the specific date; and that the City has such a lien for its taxes, which was preserved in bankruptcy, but that the payment of the claim therefor is required to be postponed until payment of the debts specified in clauses (1) and (2) of subdivision a of Section 104 of Title XI of the United States Code Annotated. See Section 107, subs. b and c of said Title. In determining the order of distribution between the City of Dallas and the United States, a careful distinction must be made between tax liens and tax priorities. It is well settled that claims for taxes secured by valid liens, like other valid liens, must be satisfied out of the bankrupt's estate before any distribution at all begins under Section 64, subject, however, to an express statutory exception inserted by the 1938 Act in Section 67, sub. c[3] which provides for postponement in payment of tax liens in certain circumstances."

In *Brans v. City of Dallas, 217 F. 2d 640 (Dec. 1954)* the Circuit Court again reviewed the same charter provision and held as follows:

> "Under settled law the City had a tax lien on the properties, from the sale of which the funds in the trustees' hands were derived and, to the extent necessary to discharge debts secured by the lien, the proceeds of the sale of the property were withdrawn from or taken out of the assets of the estate."

---

[3] 11 U. S. C. A., Section 107, Sub. c.

Thus over a period of 20 years on three different occasions the Fifth Circuit has originally determined and reaffirmed the nature and character of the lien of the City of Dallas to be a choate perfected lien.

The Texas courts have construed this same charter provision to the same effect in the cases of *Texas Employers' Insurance Association v. City of Dallas, 5 S. W. 2d 614* and *Urbish v. City of Dallas, 260 S. W. 2d 148.*

The Circuit Court in the *Brannon* case approved the Texas Court decision in *Kirk v. City of Gorman, 283 S. W. 188*, where the Court construed a Texas statute giving cities of certain class a prior and superior lien on personal property to secure its taxes. The Court used the following language:

> "It is competent for the legislature to make taxes against property superior to the lien upon said property created prior to the assessment of the tax."

The lien of the City of Dallas as stated in the *Brannon* case was a true, general, perfected, choate lien and needed no further action or resort to court in the way of distraint, recordation or otherwise. The lien arose by operation of law as of January 1st and attached to the specific property assessed of the insolvent taxpayer. A choate lien was created which U. S. Rev. Stat., Art. 3466 did not displace. Such a lien is definitely recognized in the case of *U. S. v. City of New Britain, 347 U. S. 81*, and at page 86 the Court said:

> "In the instant case, certain of the City's tax and water rent liens apparently attached to the specific property and became choate prior to the attachment of the federal tax liens."

The Fifth Circuit Court of Appeals followed the decision in the *New Britain* case to the letter in the case of *U. S. v. Atlantic Municipal Corporation, 212 F. 2d 709.*

No reason presents itself why the Circuit Court refused to follow these two decisions and apply them to the facts in this case.

In the trial court the Government asserted its claimed priority under Art. 3466 although it had a junior lien in point of time and did not insist upon its lien superseding that of the Petitioner and the private lienholders. In the Circuit Court, the United States contended for priority under R. S. 3466 over the lien of the City and private liens, which the Court rejected insofar as the private lienholders are concerned and by the method of circuity arrived at the conclusion that the lien of the City of Dallas attached to the property covered by the individual mortgages and therefore the city came ahead of the private lienholders. Thus the court recognized the true nature of Petitioner's lien by requiring the private lienholders to pay the taxes and yet it rejected the character of the lien when it considered the United States taxes. It is difficult to see any reason for the application of any rule of circuity in this case in view of the previous holdings of the Circuit Court in the *Brannon, Crippen* and *Braus* cases, supra, because the rule in the *New Britain* case should have been applied to the facts of this case.

The decisions of the United States Supreme Court in the cases of *U. S. v. Gilbert Associates, 345 U. S. 361; Illinois*

v. Campbell, 329 U. S. 362; U. S. v. Waddill Co., 323 U. S. 353; U. S. v. Texas, 314 U. S. 480; New York v. Maclay, 288 U. S. 290; Spokane County v. U. S. 279 U. S. 80 and others do not apply because in each of these cases it was determined that the asserted lien was not choate and therefore R. S. 3466 was applied.

2. The asserted claim of the Government that the states are powerless to enact legislation creating liens, specific, choate and perfected, against specific property, both real and personal, to secure the collection of its taxes, is tantamount to denial to the states of the full exercise of the power of taxation over subjects within their legitimate scope. If the Congress can override these state statutes, then such enactments are violative of the due process clause of the Constitution in that they deny to the state the rights of sovereignity and amount to take the property without due process of law. If the Congress has the authority to enact a priority law to displace any perfected, choate lien to secure the collection of state taxes and those of its political subdivisions, then it has likewise the power to enact legislation which would nullify any liens for bona fide loans or purchase price of property by private persons and lending agencies with the result that no individual or lending agency could afford to loan any money on a business to a taxpayer without underwriting the taxes that the Federal Government may impose a long time after the private business transaction or loan had been consummated. If the Congress has the right to override any statutory liens of states and their political subdivisions to

secure the collection of their taxes in insolvency and bankruptcy cases, then it likewise has the authority to prohibit states from enacting legislation creating liens to secure the collection of taxes from non-insolvent taxpayers and persons not declared bankrupt, and thus render the collection of taxes by the states impotent.

Furthermore, the attempt under R. S. 3466 to override all statutory liens of the state and its political subdivisions to secure collection of its taxes, we believe, is a direct interference with the state sovereignty. In *Ashton v. Cameron County Water Improvement District, 298 U. S. 513*, the Court struck down a part of the bankruptcy statute which Congress enacted, with the consent of the States, which permitted a public corporation to be declared bankrupt. In that case the Court said:

> "The difficulties arising out of our dual form of government, and the opportunities for differing opinions concerning the relative rights of state and national governments are many; but for a very long time this court has steadfastly adhered to the doctrine that the taxing power of Congress does not extend to the states or their political subdivisions. The same basic reasoning which leads to that conclusion, we think, requires that limitation upon the power which springs from the bankruptcy clause. U. S. v. Butler, 297 U. S. 1."

To paraphrase this language the Government's claim that the Congress by the enactment of R. S. 3466 has the power to destroy the liens and method of collections of its taxes by the state and local political subdivisions is tantamount to disabling or abridging the rights of the state to collect its taxes in violation of the Fifth Amendment of the

Constitution and also contrary to Clause 4, Section 8 of Article I of the Constitution relating to the Uniform Bankruptcy laws.

3. The Government takes the position that in insolvency cases under R. S. 3466 that the Congress has the power to override liens of the State and its political subdivisions and private liens. Title 11, Section 104(4) formerly Section 64 of the Bankruptcy Act which provides:

> "(4) Taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof"

has reference to taxes unsecured by liens.

Under Title 11, Section 107, Subdivision (b) in part it is provided:

> "• • • Where by such laws such liens are required to be perfected and arise but are not perfected before bankruptcy; they may nevertheless be valid, if perfected within the time permitted by and in accordance with the requirements of such laws, except that if such laws require the liens to be perfected by the seizure of property, they shall instead be perfected by filing notice thereof with the court."

From the foregoing it appears that in insolvency proceedings the Government is trying to assert its priority over liens, both private and public under R. S. 3466 and in bankruptcy proceedings it asserts priority of lien if it has a lien senior to all other liens, private or public, under Sections 107, subdivision (b) of the bankkruptcy act. If it has no lien then it is relegated to Section 104, subdivision a(4) to a priority on an equal basis with the state and its po-

litical subdivisions. The Supreme Court has declared that the terms "insolvency" and "bankruptcy" are convertible and mean the same thing. *Sturges v. Crowninshield, 4 Wheat. 122; Hanover National Bank v. Moyses, 186 U. S. 181; Continental Illinois National Bank and T. Co. v. Chicago RI&P Railroad Co., 294 U. S. 648.* Since insolvency and bankruptcy mean the same, does it not follow that this kind of legislation is repugnant to Clause 4, Section 8 of Article I of the Constitution which provides "that the Congress shall have power * * * to establish * * * uniform laws on the subject of Bankruptcy throughout the United States?"

4. This motion for rehearing should be granted and the writ granted for the further reason there are now pending on the docket of this Court *Nos. 97, U. S. v. R. F. Ball Construction Co.; 503, U. S. v. Boyd; 311, Commissioners v. Stern; 395, U. S. v. Bess; 410, Bess v. United States;* and *516, Latrobe Construction Co. v. United States.* In all of these cases the Government is seeking to sweep or set aside the effect of those decisions and destroy private liens or claims by the application of R. S. 3466. Although the United States did not seek a rehearing in this case yet it now asserts that the only question involved in the construction of R. S. 3466 as against the tax claim of the Petition. The brief resisting the granting of the Writ of Certiorari in this case filed by the United States Government does not state the nature of the line which the Petitioner asserts although the Circuit Court in the *Brannon, Crippen* and *Brans* cases, supra, has determined the nature of that

lien and this Court has denied Writ of Certiorari in the *Brannon* and *Crippen* cases and thereby Petitioner assumes that in denying these writs this Court had approved those decisions.

On the other hand, the United States Government has not seen fit so far to review the case of *U. S. v. Flood*, 247 F. 2d 209, in which the First Circuit Court of Appeals held that a Maritime lien is superior to a Federal tax lien on the ground that a Maritime lien is specific whereas the Federal tax lien is general and inchoate. The Government there seems to recognize the validity of a Maritime lien in the hands of a private holder, yet in the instant case it is reluctant to recognize the lien of the Petitioner, the nature and character of which had been previously adjudicated.

CONCLUSION

This Motion for Rehearing should be granted and the Order denying the Petition for Writ of Certiorari should be reversed and the Writ granted, because:

(1) The Petitioner has, on authority of adjudicated cases, a true, perfected, choate lien;

(2) The Government's claim of priority under R. S. 3466 which would have the effect of overriding statutory liens enacted by the states for the benefit of the states and their political subdivisions, would be violative of the Fifth Amendment of the Constitution, and also violative of Clause 4, Section 8 of Article I of the Constitution requiring uniform Bankruptcy laws; and

(3) Since the terms "bankruptcy" and "insolvency" are legally interchangeable and mean the same thing, the two statutes are incompatible, in that Congress intended to provide a rule for the collection of taxes by the Government where not supported by a lien, on the same basis as the state and its political subdivisions and where liens exist that they take in order in point of time.

Respectfully submitted,

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December 3, 1957.